

104TH CONGRESS
1ST SESSION

H. R. 1062

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 1995

Mr. LEACH introduced the following bill; which was referred to the Committee on Banking and Financial Services and, in addition, to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, and other financial service providers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Financial Services Competitiveness Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

TITLE I—BANK SECURITIES ACTIVITIES AND AFFILIATIONS
WITH SECURITIES FIRMS AND OTHER FINANCIAL COMPANIES

Subtitle A—Securities Activities

- Sec. 101. Anti-affiliation provision of Glass-Steagall Act repealed.
- Sec. 102. Financial services holding companies authorized to have securities affiliates.
- Sec. 103. Establishment and operations of securities affiliates.
- Sec. 104. Unitary thrift holding companies.
- Sec. 105. Securities company affiliations of FDIC-insured banks.
- Sec. 106. Authority to terminate grandfather rights under the International Banking Act of 1978.
- Sec. 107. Effect on State laws prohibiting the affiliation of banks and securities companies.
- Sec. 108. Municipal securities.
- Sec. 109. Investment bank holding companies.
- Sec. 110. Conforming amendments for investment bank holding companies.
- Sec. 111. Effective date.

Subtitle B—Brokers and Dealers

- Sec. 120. Definition of broker.
- Sec. 121. Definition of dealer.
- Sec. 122. Power to exempt from the definitions of broker and dealer.
- Sec. 123. Margin requirements.
- Sec. 124. Effective date.

Subtitle C—Bank Investment Company Activities

- Sec. 130. Custody of investment company assets by affiliated bank.
- Sec. 131. Affiliated transactions.
- Sec. 132. Borrowing from an affiliated bank.
- Sec. 133. Independent directors.
- Sec. 134. Additional SEC disclosure authority.
- Sec. 135. Definition of broker under the Investment Company Act of 1940.
- Sec. 136. Definition of dealer under the Investment Company Act of 1940.
- Sec. 137. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 138. Definition of broker under the Investment Advisers Act of 1940.
- Sec. 139. Definition of dealer under the Investment Advisers Act of 1940.
- Sec. 140. Interagency consultation.
- Sec. 141. Treatment of bank common trust funds.
- Sec. 142. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 143. Purchase of investment company securities as fiduciary.
- Sec. 144. Conforming change in definition.
- Sec. 145. Effective date.

Subtitle D—Financial Activities

- Sec. 150. Financial activities.
- Sec. 151. No prior approval required for well capitalized and well managed financial services holding companies.
- Sec. 152. Conforming amendment to the Bank Holding Company Act.
- Sec. 153. Conforming amendment to the Bank Holding Company Act Amendments of 1970.

Sec. 154. Elimination of duplicative applications.

1 TITLE I—BANK SECURITIES ACTIVITIES
2 AND AFFILIATIONS WITH SECURITIES
3 FIRMS AND OTHER FINANCIAL COM-
4 PANIES

5 Subtitle A—Securities Activities

6 SEC. 101. ANTI-AFFILIATION PROVISION OF GLASS-
7 STEAGALL ACT REPEALED.

8 (a) SECTION 20 REPEALED.—Section 20 (12 U.S.C.
9 377) of the Banking Act of 1933 is repealed.

10 (b) CONFORMING AMENDMENT TO SECTION 32.—
11 Section 32 (12 U.S.C. 78) of the Banking Act of 1933
12 is amended by adding at the end the following sentence:
13 “This section does not prohibit an officer, director, or em-
14 ployee of a securities affiliate (as defined in section 2 of
15 the Bank Holding Company Act of 1956) from serving
16 at the same time as an officer, director, or employee of
17 a member bank affiliated with that securities affiliate
18 under section 10 of the Bank Holding Company Act of
19 1956.”.

20 SEC. 102. FINANCIAL SERVICES HOLDING COMPANIES AU-
21 THORIZED TO HAVE SECURITIES AFFILIATES.

22 Section 4(c) of the Bank Holding Company Act of
23 1956 (12 U.S.C. 1943(c)) is amended—

24 (1) by striking “or” at the end of paragraph
25 (13);

1 (2) by striking the period at the end of para-
2 graph (14) and inserting “; or”; and

3 (3) by adding after paragraph (14) the follow-
4 ing new paragraph:

5 “(15) shares of a securities affiliate in accord-
6 ance with section 10.”.

7 **SEC. 103. ESTABLISHMENT AND OPERATIONS OF SECURI-**
8 **TIES AFFILIATES.**

9 (a) IN GENERAL.—Section 10 of the Bank Holding
10 Company Act of 1956 (12 U.S.C. 1841 et seq.) is amend-
11 ed to read as follows:

12 **“SEC. 10. SECURITIES ACTIVITIES.**

13 “(a) ACTIVITIES PERMISSIBLE FOR SECURITIES AF-
14 FILIATES.—A securities affiliate may engage in 1 or more
15 of the following activities:

16 “(1) Underwrite, deal in, broker, place, or dis-
17 tribute securities of any type, provide investment ad-
18 vice regarding securities of any type, and engage in
19 other securities activities as determined by the
20 Board.

21 “(2) Sponsor, organize, control, manage, and
22 act as investment adviser to an investment company.

23 “(3) Engage in, or acquire the shares of a com-
24 pany engaged in any activity if—

1 “(A) a provision of section 4(c) permits fi-
2 nancial services holding companies generally to
3 engage in that activity or acquire those shares;
4 and

5 “(B) either—

6 “(i) the Board permits the financial
7 services holding company to engage in that
8 activity or acquire those shares through
9 the securities affiliate; or

10 “(ii) that provision permits the finan-
11 cial services holding company to engage in
12 that activity or acquire those shares with-
13 out the Board’s approval.

14 “(b) ACQUIRING INTEREST IN SECURITIES AFFILI-
15 ATE.—

16 “(1) NOTICE REQUIRED.—A financial services
17 holding company shall not, without complying with
18 and receiving approval pursuant to the notice proce-
19 dure in section 4(j)(1), directly or indirectly acquire
20 or retain more than 5 percent of the voting shares
21 of, or all or substantially all of the assets of, a secu-
22 rities affiliate (or a company that would be a securi-
23 ties affiliate if the Board permitted the financial
24 services holding company to acquire that company).

1 “(2) CRITERIA FOR APPROVAL.—The Board
2 shall disapprove a notice required under paragraph
3 (1) unless the Board determines that all of the fol-
4 lowing are satisfied:

5 “(A) CAPITAL.—

6 “(i) INSURED DEPOSITORY INSTITU-
7 TIONS.—

8 “(I) The lead insured depository
9 institution of the financial services
10 holding company is well capitalized.

11 “(II) Well capitalized insured de-
12 pository institutions control at least
13 80 percent of the aggregate total risk-
14 weighted assets of insured depository
15 institutions controlled by the financial
16 services holding company.

17 “(III) All insured depository in-
18 stitutions controlled by the financial
19 services holding company are well cap-
20 italized or adequately capitalized.

21 “(ii) FINANCIAL SERVICES HOLDING
22 COMPANY.—The financial services holding
23 company is (and immediately after the ac-
24 quisition would continue to be) adequately
25 capitalized.

1 “(iii) FOREIGN BANKS AND COMPA-
2 NIES.—The Board shall establish and
3 apply comparable capital standards for the
4 ownership or control of a securities affli-
5 ate in the United States by a foreign bank
6 (as defined in section 1(b) of the Inter-
7 national Banking Act of 1978), giving due
8 regard to the principle of national treat-
9 ment and equality of competitive oppor-
10 tunity in the United States.

11 “(B) MANAGERIAL RESOURCES.—

12 “(i) IN GENERAL.—The financial
13 services holding company and each of its
14 subsidiary insured depository institu-
15 tions—

16 “(I) are well managed; and

17 “(II) were well managed during
18 the preceding 12-month period (but
19 for purposes of this subparagraph the
20 Board may disregard any insured de-
21 pository institution acquired by the fi-
22 nancial services holding company dur-
23 ing that period).

24 “(ii) SECURITIES ACTIVITIES.—The
25 financial services holding company has the

1 managerial resources to conduct the pro-
2 posed securities activities safely and sound-
3 ly.

4 “(C) INTERNAL CONTROLS.—The financial
5 services holding company has established ade-
6 quate policies and procedures to manage finan-
7 cial and operational risks and to provide rea-
8 sonable assurance of compliance with this sec-
9 tion and other applicable laws.

10 “(D) NO DETRIMENTAL EFFECT ON FI-
11 NANCIAL SERVICES HOLDING COMPANY OR ITS
12 SUBSIDIARY INSURED DEPOSITORY INSTITU-
13 TIONS.—The acquisition would not adversely af-
14 fect the safety and soundness of—

15 “(i) the financial services holding
16 company; or

17 “(ii) any insured depository institu-
18 tion subsidiary of the financial services
19 holding company.

20 “(E) CONCENTRATION OF RESOURCES.—
21 The acquisition would not result in an undue
22 concentration of resources in the commercial
23 banking and investment banking business.

1 “(3) NO NOTICE FOR PROPOSALS BY WELL-
2 CAPITALIZED AND WELL-MANAGED COMPANIES TO
3 ACQUIRE ADDITIONAL SECURITIES AFFILIATES.—

4 “(A) ADDITIONAL SECURITIES AFFILI-
5 ATES.—A financial services holding company
6 may, without providing the notice required
7 under subsection (b), directly or indirectly ac-
8 quire the shares or substantially all of the as-
9 sets of any company that is engaged in activi-
10 ties described in subsection (a) (1) and (2), if—

11 “(i) the financial services holding
12 company previously received the Board’s
13 approval under subsection (b) to control a
14 securities affiliate and continues to control
15 the securities affiliate pursuant to that ap-
16 proval; and

17 “(ii) the acquisition proposal qualifies
18 under section 4(j)(4), and the financial
19 services holding company provides the writ-
20 ten notification required in section 4(j)(5).

21 “(c) ADDITIONAL INVESTMENT IN SECURITIES AF-
22 FILIATE.—

23 “(1) PRIOR NOTICE REQUIRED.—A financial
24 services holding company that has acquired control
25 of a securities affiliate under this section shall not,

1 directly or indirectly, make any additional invest-
2 ment in the securities affiliate that is considered
3 capital for purposes of any capital requirement im-
4 posed on the securities affiliate under the Securities
5 Exchange Act of 1934 (other than an extension of
6 credit under a revolving credit agreement approved
7 by the Board), unless the financial services holding
8 company gives the Board prior written notice of the
9 proposed investment and—

10 “(A) the Board issues a written statement
11 of its intent not to disapprove the notice; or

12 “(B) the Board does not disapprove the
13 notice within 30 days after the notice is filed.

14 “(2) NO PRIOR NOTICE REQUIRED FOR CER-
15 TAIN FINANCIAL SERVICES HOLDING COMPANIES.—

16 A financial services holding company is not required
17 to provide prior notice under paragraph (1) if after
18 making any investment described in paragraph (1)—

19 “(A) the financial services holding com-
20 pany would be adequately capitalized and each
21 of the financial services holding company’s sub-
22 sidiary insured depository institutions would be
23 well capitalized; and

24 “(B) the financial services holding com-
25 pany and each of its subsidiary insured deposi-

1 tory institutions are well managed (but for pur-
2 poses of this clause the Board may disregard
3 any insured depository institution acquired by
4 the financial services holding company during
5 the previous 12-month period).

6 “A financial services holding company that makes
7 an investment pursuant to this paragraph shall pro-
8 vide written notice to the Board of the additional in-
9 vestment within 10 days after making the invest-
10 ment.

11 “(3) CRITERIA FOR DISAPPROVING NOTICE.—
12 The Board may disapprove a notice filed under
13 paragraph (1) if any insured depository institution
14 affiliate of the securities affiliate is undercapitalized,
15 or if the Board determines that the financial services
16 holding company would be undercapitalized after
17 making the investment or that the investment would
18 otherwise be unsafe or unsound.

19 “(4) EMERGENCY APPROVAL.—Notwithstanding
20 any provision of this subsection, in the event of ad-
21 verse market conditions, or concerns regarding the
22 financial or operational condition of the securities
23 affiliate, the Board may approve any additional in-
24 vestment in the securities affiliate on an emergency
25 basis.

1 “(d) PROVISIONS APPLICABLE IF AFFILIATED IN-
2 SURED DEPOSITORY INSTITUTION CEASES TO BE WELL
3 CAPITALIZED.—

4 “(1) CERTAIN SECURITIES ACTIVITIES RE-
5 STRICTED UNLESS AFFILIATED INSTITUTIONS ARE
6 WELL CAPITALIZED.—

7 “(A) APPLICABILITY.—This paragraph
8 shall apply to a securities affiliate if—

9 “(i) the lead insured depository insti-
10 tution of the financial services holding
11 company is not well capitalized, or

12 “(ii) well capitalized insured deposi-
13 tory institutions do not control at least 80
14 percent of the assets of insured depository
15 institutions affiliated with the securities af-
16 filiate.

17 “(B) IN GENERAL.—Except as provided in
18 subparagraph (C), the securities affiliate shall
19 not, beginning 180 days after subparagraph (A)
20 applies, agree to underwrite or deal in any secu-
21 rities other than—

22 “(i) securities expressly specified by
23 section 5136 of the Revised Statutes as
24 permissible for a national bank to under-
25 write or deal in;

1 “(ii) securities backed by or represent-
2 ing interests in notes, drafts, acceptances,
3 loans, leases, receivables, other obligations,
4 or pools of any such obligations; or

5 “(iii) securities issued by an open-end
6 investment company registered under the
7 Investment Company Act of 1940.

8 “(C) EXCEPTION.—The Board may permit
9 the securities affiliate to underwrite or deal in
10 securities not described in clauses (i) through
11 (iii) of subparagraph (B) for a period of 1 year
12 from the date on which subparagraph (A) ap-
13 plies, if—

14 “(i) the financial services holding
15 company submits a capital restoration plan
16 to the Board specifying the steps the fi-
17 nancial services holding company will take
18 to meet the requirements of section
19 10(b)(2)(A), and containing such other in-
20 formation as the Board may require; and

21 “(ii) the Board approves the plan.

22 “(D) EXTENSION OF PERIOD.—Upon ap-
23 plication by the financial services holding com-
24 pany, the Board may extend, for not more than
25 one year at a time, the period provided in sub-

1 paragraph (C), but no such extension under
2 this subparagraph shall in the aggregate exceed
3 two years.

4 “(2) DIVESTITURE.—

5 “(A) IN GENERAL.—The financial services
6 holding company shall divest itself of the securi-
7 ties affiliate if any of the financial services
8 holding company’s subsidiary insured depository
9 institutions has been undercapitalized for more
10 than 6 months.

11 “(B) EXTENDING TIME.—The Board may
12 provide additional time for divestiture not ex-
13 ceeding 30 months if—

14 “(i) the appropriate Federal banking
15 agency has approved the undercapitalized
16 institution’s capital restoration plan under
17 section 38(e) of the Federal Deposit Insur-
18 ance Act; and

19 “(ii) the Board determines that the
20 securities affiliate poses no significant risk
21 to any affiliated insured depository institu-
22 tion.

23 “(e) SECURITIES AFFILIATE EXCLUDED IN DETER-
24 MINING WHETHER FINANCIAL SERVICES HOLDING COM-
25 PANY IS ADEQUATELY CAPITALIZED.—

1 “(1) IN GENERAL.—In determining whether a
2 financial services holding company is adequately cap-
3 italized—

4 “(A) the financial services holding compa-
5 ny’s capital and total assets shall each be re-
6 duced by—

7 “(i) an amount equal to the amount
8 of the financial services holding company’s
9 equity investment in any securities affili-
10 ate; and

11 “(ii) an amount equal to the amount
12 of any extensions of credit by the financial
13 services holding company to any securities
14 affiliate that are considered capital for
15 purposes of any capital requirement im-
16 posed on the securities affiliate under sec-
17 tion 15(c)(3) of the Securities Exchange
18 Act of 1934; and

19 “(B) the securities affiliate’s assets and li-
20 abilities shall not be consolidated with those of
21 the financial services holding company.

22 “(2) EXCEPTION FOR NONSECURITIES ACTIVI-
23 TIES.—Paragraph (1) does not apply to the extent
24 that the Board determines by regulation or order
25 that—

1 “(A) an item described in that paragraph
2 relates to activities that are not described in
3 paragraph (1) or (2) of subsection (a); or

4 “(B) the calculation in paragraph (1) is
5 not required or appropriate, or another method
6 of adjusting capital is more appropriate, to en-
7 sure the safety and soundness of insured depos-
8 itory institutions.

9 “(f) SAFEGUARDS RELATING TO SECURITIES AFFILI-
10 ATES.—

11 “(1) EXTENSIONS OF CREDIT AND ASSET PUR-
12 CHASES RESTRICTED.—

13 “(A) IN GENERAL.—No insured depository
14 institution affiliated with a securities affiliate
15 shall, directly or indirectly, do any of the follow-
16 ing:

17 “(i) Extend credit in any manner to
18 the securities affiliate.

19 “(ii) Issue a guarantee, acceptance, or
20 letter of credit, including an endorsement
21 or a standby letter of credit, for the benefit
22 of the securities affiliate.

23 “(iii) Purchase for its own account fi-
24 nancial assets of the securities affiliate, ex-
25 cept to the extent permitted by the Board

1 with respect to purchasing at the current
2 market value (based on reliable and regu-
3 larly available price quotations)—

4 “(I) securities expressly specified
5 by section 5136 of the Revised Stat-
6 utes as permissible for a national
7 bank to underwrite or deal in; or

8 “(II) securities that—

9 “(aa) the securities affiliate
10 has been marking to market
11 daily; and

12 “(bb) are rated investment
13 grade by at least 1 nationally
14 recognized statistical rating orga-
15 nization.

16 “(B) EXCEPTION FOR CLEARING SECURI-
17 TIES.—Subparagraph (A)(i) does not prohibit
18 an extension of credit by a well capitalized in-
19 sured depository institution made to acquire or
20 sell securities if—

21 “(i) the extension of credit is inciden-
22 tal to clearing transactions in those securi-
23 ties through that insured depository insti-
24 tution;

1 “(ii) both the principal of and the in-
2 terest on the extension of credit are fully
3 secured by those securities;

4 “(iii) either—

5 “(I) the extension of credit is to
6 be repaid on the same calendar day;
7 or

8 “(II) all of the following condi-
9 tions are satisfied:

10 “(aa) the securities cannot,
11 in the ordinary course of busi-
12 ness, be cleared on that calendar
13 day;

14 “(bb) the extension of credit
15 is to be repaid before the close of
16 business on the next calendar
17 day; and

18 “(cc) extensions of credit
19 under this subclause, when ag-
20 gregated with all other covered
21 transactions between the institu-
22 tion and all affiliated securities
23 affiliates do not exceed 10 per-
24 cent of the institution’s capital
25 stock and surplus; and

1 “(iv) either—

2 “(I) the securities are securities
3 expressly specified by section 5136 of
4 the Revised Statutes as permissible
5 for a national bank to underwrite or
6 deal in; or

7 “(II) to the extent that the
8 Board permits transactions under this
9 paragraph in securities not described
10 in subclause (I), the securities affiliate
11 provides the insured depository insti-
12 tution such additional security or
13 other assurance of performance, if
14 any, as the Board shall require to pre-
15 vent such transactions from posing
16 any appreciable risk to the institution.

17 “(C) OTHER EXCEPTIONS.—The Board
18 may make exceptions to subparagraph (A) for
19 well capitalized insured depository institutions
20 if—

21 “(i) the transaction is fully secured in
22 accordance with section 23A(c) of the Fed-
23 eral Reserve Act; and

24 “(ii) the aggregate amount of covered
25 transactions between the institution and all

1 securities affiliates of the financial services
2 holding company, excluding transactions
3 permitted under subparagraph (A)(iii)(I)
4 or (B)(iii)(I), does not exceed 10 percent
5 of the institution's capital stock and sur-
6 plus.

7 “(2) CREDIT ENHANCEMENT RESTRICTED.—

8 “(A) IN GENERAL.—No insured depository
9 institution affiliated with a securities affiliate
10 shall, directly or indirectly, extend credit, or
11 issue or enter into a standby letter of credit,
12 asset purchase agreement, indemnity, guaran-
13 tee, insurance, or other facility, for the purpose
14 of enhancing the marketability of a securities
15 issue underwritten by the securities affiliate.

16 “(B) EXCEPTIONS.—The Board may make
17 exceptions to subparagraph (A)—

18 “(i) for well capitalized insured depos-
19 itory institutions if—

20 “(I) the insured depository insti-
21 tution has adopted appropriate limits
22 on exposure on a consolidated basis to
23 any single customer whose securities
24 are underwritten by the securities af-
25 filiate; and

1 “(II) the institution and its secu-
2 rities affiliate have adopted appro-
3 priate procedures, including mainte-
4 nance of necessary documentary
5 records, to assure that any such ex-
6 tension of credit, standby letter of
7 credit, asset purchase agreement, in-
8 demnity, guarantee, insurance or
9 other facility, is on an arm’s length
10 basis. An extension of credit is consid-
11 ered to be on an arm’s length basis if
12 the terms and conditions are substan-
13 tially the same as those prevailing at
14 the time for comparable transactions
15 involving securities that are not un-
16 derwritten by the securities affiliate;
17 or

18 “(ii) for securities expressly specified
19 by section 5136 of the Revised Statutes as
20 permissible for a national bank to under-
21 write or deal in.

22 “(3) PROHIBITION ON FINANCING PURCHASE
23 OF SECURITY BEING UNDERWRITTEN.—

24 “(A) IN GENERAL.—No financial services
25 holding company or subsidiary of a financial

1 services holding company (other than a securi-
2 ties affiliate) shall knowingly extend or arrange
3 for the extension of credit, directly or indirectly,
4 secured by or for the purpose of purchasing any
5 security while, or for 30 days after, that secu-
6 rity is the subject of a distribution in which a
7 securities affiliate of that financial services
8 holding company participates as an underwriter
9 or a member of a selling group. For purposes
10 of this subparagraph, a financial services hold-
11 ing company or subsidiary may rely on an ex-
12 press written acknowledgement signed by the
13 borrower that the credit is not secured by or for
14 the purpose of purchasing a security described
15 in this subparagraph.

16 “(B) EXCEPTIONS.—The Board may make
17 exceptions to subparagraph (A)—

18 “(i) for extensions of credit if the se-
19 curities are securities expressly specified by
20 section 5136 of the Revised Statutes as
21 permissible for a national bank to under-
22 write or deal in;

23 “(ii) for any other extension of credit,
24 after consultation with and considering the

1 views of the Securities and Exchange Com-
2 mission, if—

3 “(I) the financial services holding
4 company is adequately capitalized,

5 “(II) the financial services hold-
6 ing company’s lead insured depository
7 institution is well capitalized, and

8 “(III) well capitalized insured de-
9 pository institutions control at least
10 80 percent of the assets of insured de-
11 pository institutions controlled by the
12 financial services holding company
13 and all insured depository institutions
14 controlled by the financial services
15 holding company are well capitalized
16 or adequately capitalized.

17 “(C) CONSISTENCY WITH THE FEDERAL
18 SECURITIES LAWS.—Nothing in this paragraph
19 shall permit a securities affiliate to extend or
20 maintain credit or arrange for an extension of
21 credit except in compliance with applicable pro-
22 visions of the Securities Exchange Act of 1934
23 and the rules and interpretations thereunder.

24 “(4) RESTRICTIONS ON EXTENDING CREDIT TO
25 MAKE PAYMENTS ON SECURITIES.—

1 “(A) IN GENERAL.—No insured depository
2 institution affiliated with a securities affiliate
3 shall, directly or indirectly, extend credit to an
4 issuer of securities underwritten by the securi-
5 ties affiliated for the purpose of paying the
6 principal of those securities or interest or divi-
7 dends on those securities. This subparagraph
8 does not apply to an extension of credit for a
9 documented purpose (other than paying prin-
10 cipal, interest, or dividends) if the timing, ma-
11 turity, and other terms of the credit, taken as
12 a whole, are substantially different from those
13 of the underwritten securities.

14 “(B) EXCEPTIONS.—The Board may make
15 exceptions to subparagraph (A) for well capital-
16 ized insured depository institutions if—

17 “(i)(I) the insured depository institu-
18 tion has adopted appropriate limits on ex-
19 posure on a consolidated basis to any sin-
20 gle customer whose securities are under-
21 written by the securities affiliate; and

22 “(II) the insured depository institu-
23 tion has adopted appropriate procedures,
24 including maintenance of necessary docu-
25 mentary records, to assure that any exten-

1 sion of credit by the depository institution
2 to an issuer for the purpose of paying the
3 principal, interest or dividends on securi-
4 ties underwritten by the securities affiliate
5 is on an arm's length basis. An extension
6 of credit is considered to be on an arm's
7 length basis if the terms and conditions
8 are substantially the same as those prevail-
9 ing at the time for comparable transactions
10 with issuers whose securities are not un-
11 derwritten by the securities affiliate; or

12 “(ii) the securities are securities ex-
13 pressly specified by section 5136 of the Re-
14 vised Statutes as permissible for a national
15 bank to underwrite to deal in.”.

16 “(5) DIRECTOR AND SENIOR EXECUTIVE OFFI-
17 CER INTERLOCKS RESTRICTED.—

18 “(A) IN GENERAL.—No director or senior
19 executive officer of a securities affiliate shall
20 serve at the same time as a director or senior
21 executive officer of any affiliated insured depos-
22 itory institution.

23 “(B) EXCEPTION FOR SMALL FINANCIAL
24 SERVICES HOLDING COMPANIES.—Notwith-
25 standing subparagraph (A), a director or senior

1 executive officer of a securities affiliate may
2 serve at the same time as a director or senior
3 executive officer of an affiliated insured deposi-
4 tory institution if that institution and all affili-
5 ated insured depository institutions have, in the
6 aggregate, total assets of not more than
7 \$500,000,000. The dollar limitation in the pre-
8 ceding sentence shall be adjusted annually after
9 December 31, 1995, by the annual percentage
10 increase in the Consumer Price Index for
11 Urban Wage Earners and Clerical Workers
12 published by the Bureau of Labor Statistics.

13 “(C) BOARD’S AUTHORITY TO MAKE EX-
14 CEPTIONS.—

15 “(i) IN GENERAL.—The Board may,
16 by regulation or order, make exceptions to
17 subparagraph (A).

18 “(ii) STANDARDS.—The Board—

19 “(I) shall, in determining wheth-
20 er to make such exceptions, consider
21 the size of the financial services hold-
22 ing companies, insured depository in-
23 stitutions, and securities affiliates in-
24 volved, any burdens that may be im-
25 posed by subparagraph (A), the safety

1 and soundness of the insured deposi-
2 tory institutions and securities affili-
3 ates, and other appropriate factors,
4 including unfair competition in securi-
5 ties activities or the improper ex-
6 change of nonpublic customer infor-
7 mation; and

8 “(II) shall not permit—

9 “(aa) more than half of the
10 insured depository institution’s
11 directors to be directors or senior
12 executive officers of the securities
13 affiliate; or

14 “(bb) more than half of the
15 securities affiliate’s directors to
16 be directors or senior executive
17 officers of the insured depository
18 institution.

19 “(D) SENIOR EXECUTIVE OFFICER DE-
20 FINED.—For purposes of this paragraph, the
21 term ‘senior executive officer’ has the same
22 meaning as the term ‘executive officer’ has in
23 section 22(h) of the Federal Reserve Act.

24 “(6) DISCLOSURE REQUIRED BY SECURITIES
25 AFFILIATE.—At the time a securities account is

1 opened, a securities affiliate shall conspicuously dis-
2 close in writing to each of its customers that—

3 “(A) securities sold, offered, or rec-
4 ommended by the securities affiliate are not de-
5 posits, are not insured by the Federal Deposit
6 Insurance Corporation, are not guaranteed by
7 an affiliate insured depository institution, and
8 are not otherwise an obligation of an insured
9 depository institution (unless such is the case);

10 “(B) the securities affiliate is not an in-
11 sured depository institution, and is a corpora-
12 tion separate from any insured depository insti-
13 tution; and

14 “(C) the securities affiliate may be under-
15 writing or dealing in the securities being sold,
16 offered or recommended, and if so, would have
17 a financial interest in the transaction.

18 “(7) DISCLOSURE REQUIRED BY INSURED DE-
19 POSITORY INSTITUTIONS.—No insured depository in-
20 stitution shall knowingly express any opinion on the
21 value of, or the advisability of purchasing or selling,
22 non-deposit investment products being underwritten
23 or dealt in by the insured depository institution or
24 any affiliate thereof unless the insured depository in-

stitution conspicuously discloses in writing to the customer that—

“(A) the insured depository institution or affiliate (whichever is applicable) is underwriting or dealing in the non-deposit investment product and has a financial interest in the transaction;

“(B) the non-deposit investment products are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by the institution or any other affiliated insured depository institution, and are not otherwise an obligation of an insured depository institution (unless such is the case), and, with regard to any non-deposit investment product that includes any investment component, are subject to investment risks including possible loss of principal invested; and

“(C) an affiliate, if involved, is not an insured depository institution (unless such is the case), and is a corporation separate from any insured depository institution (unless such is the case).

“(8) IMPROPER DISCLOSURE OF CONFIDENTIAL CUSTOMER INFORMATION PROHIBITED—

1 “(A) IN GENERAL.—No insured depository
2 institution subsidiary of a financial services
3 holding company shall disclose to a securities
4 affiliate of that financial services holding com-
5 pany, nor shall a securities affiliate disclose to
6 any affiliated insured depository institution or
7 subsidiary of such an institution, any nonpublic
8 customer information (including an evaluation
9 of the creditworthiness of an issuer or other
10 customer of that institution or securities affili-
11 ate), unless it is clearly and conspicuously dis-
12 closed that such information may be commu-
13 nicated among such persons and the customer
14 is given the opportunity, prior to the time that
15 the information is initially communicated, to di-
16 rect that such information not be communicated
17 among such persons.

18 “(B) DEFINITION.—For purposes of sub-
19 paragraph (A), the term ‘nonpublic customer
20 information’ does not include—

21 “(i) customers’ names and addresses
22 (unless a customer has specified other-
23 wise);

24 “(ii) information that could be ob-
25 tained from unaffiliated credit bureaus or

1 similar companies in the ordinary course of
2 business; or

3 “(iii) information that is customarily
4 provided to unaffiliated credit bureaus or
5 similar companies in the ordinary course of
6 business by—

7 “(I) insured depository institu-
8 tions not affiliated with securities af-
9 filiates; or

10 “(II) brokers and dealers not af-
11 filiated with insured depository insti-
12 tutions.

13 “(9) UNDERWRITING SECURITIES REPRESENT-
14 ING OBLIGATIONS ORIGINATED BY AFFILIATE RE-
15 STRICTED.—A securities affiliate shall not under-
16 write securities secured by or representing an inter-
17 est in mortgages or other obligations originated or
18 purchased by an affiliated insured depository institu-
19 tion or subsidiary of such an institution—

20 “(A) unless those securities—

21 “(i) are rated by at least 1 unaffili-
22 ated, nationally recognized statistical rat-
23 ing organization;

24 “(ii) are issued or guaranteed by the
25 Federal Home Loan Mortgage Corpora-

tion, the Federal National Mortgage Association, or the Government National Mortgage Association; or

“(iii) represent interests in securities described in clause (ii); or

“(B) except as permitted by the Board.

“(10) RECIPROCAL ARRANGEMENTS PROHIBITED.—No financial services holding company and no subsidiary of a financial services holding company may enter into any agreement, understanding, or other arrangement under which—

“(A) one financial services holding company (or subsidiary of that financial services holding company) agrees to engage in a transaction with, or in behalf of, another financial services holding company (or subsidiary of that financial services holding company), in exchange for

“(B) the agreement of the second financial services holding company referred to in subparagraph (A) (or a subsidiary of that financial services holding company) to engage in any transaction with, or on behalf of, the first financial services holding company referred to in that subparagraph (or any subsidiary of that fi-

1 nancial services holding company), for the pur-
2 pose of evading any requirement or restriction
3 of Federal law on transactions between, or for
4 the benefit of, affiliates of financial services
5 holding companies.

6 “(11) SAFEGUARDS APPLY TO CERTAIN SUB-
7 SIDIARIES.—Except as provided in this subsection:

8 “(A) SECURITIES AFFILIATE.—No subsidi-
9 ary of a securities affiliate may do anything
10 that this subsection prohibits the securities af-
11 filiate from doing.

12 “(B) DEPOSITORY INSTITUTION.—No sub-
13 sidiary of an insured depository institution or of
14 a wholesale financial institution may do any-
15 thing that this subsection prohibits the institu-
16 tion from doing.

17 “(12) AUTHORITY TO MODIFY AND IMPOSE AD-
18 DITIONAL SAFEGUARDS; INTERPRETIVE AUTHOR-
19 ITY.—

20 “(A) IN GENERAL.—The Board may, by
21 regulation or order—

22 “(i) adopt additional limitations, re-
23 strictions or conditions on relationships or
24 transactions among insured depository in-

stitutions, their affiliates, and their customers; and

“(ii) make any modification to any limitation, restriction or condition on relationships or transactions among insured depository institutions, their affiliates and their customers imposed under this subsection, including modifications in addition to those expressly provided for in this subsection.

“(B) STANDARDS.—The Board may not exercise authority under subparagraph (A)(i) or subparagraph (A)(ii) unless the Board finds that such action is consistent with the purposes of this Act, including the avoidance of any significant risk to the safety and soundness of insured depository institutions or the federal deposit insurance funds, enhancement of the financial stability of financial services holding companies, prevention of the subsidization of securities affiliates by insured depository institutions, avoidance of conflicts of interest or other abuses, and application of the principle of national treatment and equality of competitive opportunity between securities affiliates owned

1 or controlled by domestic financial services
2 holding companies and securities affiliates
3 owned or controlled by foreign banks operating
4 in the United States.

5 “(13) COMPLIANCE PROGRAMS REQUIRED.—

6 “(A) IN GENERAL.—Each appropriate
7 Federal banking agency and the Securities and
8 Exchange Commission shall establish a program
9 for—

10 “(i) sharing information concerning
11 compliance with subtitles A, B, or C of
12 title I of the Financial Services Competi-
13 tiveness Act of 1995 by—

14 “(I) entities that are brokers,
15 dealers, investment advisers or invest-
16 ment companies registered with the
17 Securities and Exchange Commission
18 that are affiliated with insured deposi-
19 tory institutions, or are separately
20 identifiable departments or divisions
21 of insured depository institutions reg-
22 istered as investment advisers; and

23 “(II) such insured depository in-
24 stitutions and their affiliates;

1 “(ii) enforcing compliance with sub-
2 title A of title I of the Financial Services
3 Competitiveness Act of 1995 and section
4 3(a)(4) and 3(a)(5) of the Securities Ex-
5 change Act of 1934 by entities under its
6 supervision; and

7 “(iii) responding to any complaints
8 from customers about inappropriate cross-
9 marketing of securities products or inad-
10 equate disclosure.

11 (B) DATA COLLECTION.—

12 “(i) IN GENERAL.—The appropriate
13 Federal banking agencies, after consulta-
14 tion with and consideration of the views of
15 the Securities and Exchange Commission,
16 may require any depository institution that
17 has effected securities transactions pursu-
18 ant to any exception enumerated in sec-
19 tions 3(a)(4)(C) and 3(a)(5) of the Securi-
20 ties Exchange Act of 1934 to identify the
21 exceptions relied upon and to submit such
22 information necessary to monitor compli-
23 ance under sections 3(a)(4)(C) and 3(a)(5)
24 of the Securities Exchange Act of 1934.

1 “(ii) COMMISSION ACCESS.—The ap-
2 propriate Federal banking agency shall
3 make any such information available to the
4 commission upon request.

5 “(iii) COMPLIANCE.—In implementing
6 the provisions of this subparagraph, the
7 appropriate Federal banking agencies shall
8 ensure that any information requests to in-
9 sured depository institutions take into ac-
10 count the size and activities of the institu-
11 tions and do not cause undue reporting
12 burdens.

13 “(C) COMMISSION’S ENFORCEMENT AU-
14 THORITY.—Without limiting in any way the au-
15 thority of the appropriate Federal banking
16 agencies under this subsection, the Securities
17 and Exchange Commission shall have the au-
18 thority to enforce the provisions of this sub-
19 section against a securities affiliate to the ex-
20 tent that those provisions govern the conduct or
21 activities of the securities affiliate as if they
22 were provisions of the Securities Exchange Act
23 of 1934.

24 “(D) EXAMINATION REPORTS.—The ap-
25 propriate Federal banking agencies shall, to the

1 extent practicable, use the reports of examina-
2 tion of any broker, dealer, investment adviser,
3 or investment company made by or on behalf of
4 the Securities and Exchange Commission and
5 reports made by or on behalf of a registered se-
6 curities association or national securities ex-
7 change, and shall defer to such examinations
8 for compliance with the federal securities laws.

9 “(E) INTERPRETATIONS OF THE FEDERAL
10 SECURITIES LAWS.—The appropriate Federal
11 banking agencies shall defer to the Securities
12 and Exchange Commission regarding all inter-
13 pretations and enforcement of the Federal secu-
14 rities laws relating to the application of the
15 Federal securities laws to the activities and con-
16 duct of brokers, dealers, investment advisers,
17 and investment companies.

18 “(F) NOTICE OF CERTAIN ACTIONS.—

19 “(i) SECURITIES AND EXCHANGE
20 COMMISSION.—The Securities and Ex-
21 change Commission shall give notice to the
22 appropriate Federal banking agency upon
23 the entry of an order of investigation of, or
24 the commencement of any disciplinary or
25 law enforcement proceedings by the Com-

1 mission and a copy of any order entered by
2 the Commission against—

3 “(I) any broker, dealer, or invest-
4 ment adviser that—

5 “(aa) is registered with the
6 Securities and Exchange Com-
7 mission; and

8 “(bb) is affiliated with or is
9 a separately identifiable depart-
10 ment or division of an insured
11 depository institution;

12 “(II) any investment company
13 registered with the Securities and Ex-
14 change Commission that is an affiliate
15 of or is advised by an investment ad-
16 viser affiliated with an insured deposi-
17 tory institution or by a separately
18 identifiable department or division of
19 an insured depository institution that
20 is a registered investment adviser; or

21 “(III) any financial services hold-
22 ing company, insured depository insti-
23 tution, or subsidiary of such company
24 or institution, if the proposed action
25 relates to subtitles A, B, or C of title

1 I of the Financial Services Competi-
2 tiveness Act of 1995.

3 “(ii) APPROPRIATE FEDERAL BANK-
4 ING AGENCIES.—Upon the entry of an
5 order of investigation of, or the commence-
6 ment of any disciplinary or law enforce-
7 ment proceedings to enforce the provisions
8 of subtitle A of title I of the Financial
9 Services Competitiveness Act of 1995 by
10 an appropriate Federal banking agency
11 against any broker, dealer, investment ad-
12 viser, or investment company that is reg-
13 istered under the Federal securities laws
14 and is affiliated with an insured depository
15 institution, the appropriate Federal bank-
16 ing agency shall give notice to the Securi-
17 ties and Exchange Commission of the pro-
18 posed action.

19 “(iii) EXTENSION.—The notice re-
20 quired under clause (i) or (ii) may be pro-
21 vided promptly after action by the Securi-
22 ties and Exchange Commission or the ap-
23 propriate Federal banking agency, if—

24 “(I) the Commission determines
25 that the protection of investors re-

1 quires immediate action by the Com-
2 mission and prior notice under clause
3 (i) is not practical under the cir-
4 cumstances; or

5 “(II) the appropriate Federal
6 banking agency determines that con-
7 cerns for the safety and soundness of
8 an insured depository institution or its
9 affiliate require immediate action by
10 the agency and prior notice under
11 clause (ii) is not practical under the
12 circumstances.

13 “(G) COORDINATED ENFORCEMENT AC-
14 TIONS.—The Securities and Exchange Commis-
15 sion and the appropriate Federal banking agen-
16 cies shall, to the extent practicable, coordinate
17 supervisory actions based on applicable law
18 where the actions are based on the same or re-
19 lated events or practices.

20 “(H) INVESTMENT COMPANIES NOT AF-
21 FILATED WITH AN INSURED DEPOSITORY IN-
22 STITUTION.—The appropriate Federal banking
23 agency shall not have authority under this title
24 or any other provision of law to inspect or ex-

1 amine any investment company registered
2 under the Federal securities laws that is not—

3 “(i) affiliated with an insured deposi-
4 tory institution; or

5 “(ii) advised by an investment adviser
6 affiliated with an insured depository insti-
7 tution or by a separately identifiable de-
8 partment or division of an insured deposi-
9 tory institution that is a registered invest-
10 ment adviser.

11 “(I) DEFINITION.—For purposes of this
12 paragraph, the term ‘Federal securities laws’
13 shall mean the provisions of Federal law gov-
14 erning securities activities that are within the
15 jurisdiction of the Securities and Exchange
16 Commission as set forth in the Securities Act of
17 1933, the Securities Exchange Act of 1934, the
18 Investment Company Act of 1940, the Invest-
19 ment Advisers Act of 1940, and the Trust In-
20 denture Act of 1939.

21 “(g) ACTIVITIES NOT PERMISSIBLE FOR DEPOSI-
22 TORY INSTITUTIONS OR SECURITIES AFFILIATES.—

23 “(1) A financial services holding company that
24 acquires control of a securities affiliate shall not, be-
25 ginning 1 year after the date of that acquisition,

1 permit any depository institution (as defined in sec-
2 tion 3 of the Federal Deposit Insurance Act) of
3 which it has control or any subsidiary of that insti-
4 tution—

5 “(A) to engage, directly or indirectly, in
6 the United States—

7 “(i) in underwriting securities backed
8 by or representing interests in notes,
9 drafts, acceptances, loans, leases, receiv-
10 ables, other obligations, or pools of any
11 such obligations, originated or purchased
12 by the institution or its affiliates;

13 “(ii) in underwriting or dealing in any
14 other securities, except securities expressly
15 specified by section 5136 of the Revised
16 Statutes as permissible for a national bank
17 to underwrite or deal in; or

18 “(iii) in effecting sales as part of a
19 primary offering to an accredited investor
20 (as defined in section 2 of the Securities
21 Act of 1933) of securities of an issuer, not
22 involving a public offering, pursuant to
23 section 3(b), 4(2), or 4(6) of the Securities
24 Act of 1933 and the rules and regulations
25 issued thereunder; or

1 “(B) to make an equity investment in any
2 securities affiliate.

3 “(2) For purposes of this subsection, the term
4 ‘depository institution’ shall include any state branch
5 or agency of a foreign bank, as those terms are de-
6 fined in section 1(b) of the International Banking
7 Act of 1978.

8 “(3) The limitations in paragraph (1)(A) shall
9 not apply to activities conducted by a subsidiary held
10 pursuant to section 25 or 25A of the Federal Re-
11 serve Act of section 4(c)(13) of this Act.

12 “(4) Nothing in this section shall permit a secu-
13 rities affiliate to accept deposits in contravention of
14 section 21 of the Banking Act of 1933 (12 U.S.C.
15 378(a)).

16 “(h) APPROVAL OF SECURITIES ACTIVITIES UNDER
17 SECTION 4(c)(8) RESTRICTED.—The Board shall deny
18 any notice or application by a financial services holding
19 company under authority of section 4(c)(8) to engage in,
20 or acquire the shares of a company engaged in, underwrit-
21 ing or dealing in securities in the United States, except
22 securities expressly specified by section 5136 of the Re-
23 vised Statutes as permissible for a national bank to under-
24 write or deal in.

1 “(i) BANKERS’ BANKS.—For purposes of this sec-
2 tion, each shareholder of or participant in a company that
3 controls a depository institution described in section
4 5169(b)(1) of the Revised Statutes or in a similar statute
5 of any State, and each subsidiary of that company. This
6 subsection shall not apply to a shareholder or participant
7 in that company (or subsidiary of that shareholder or par-
8 ticipant) if the shareholder or participant and its affiliates
9 do not, in the aggregate, control more than 5 percent of
10 any class of voting shares of that company.

11 “(j) SHARES ACQUIRED IN CONNECTION WITH UN-
12 DERWRITING AND INVESTMENT BANKING ACTIVITIES.—

13 “(1) IN GENERAL.—Notwithstanding section
14 4(a), a financial services holding company may di-
15 rectly or indirectly own or control shares of any
16 company engaged in activities not authorized pursu-
17 ant to section 4 of this Act if—

18 “(A) the shares are acquired and held by
19 a securities affiliate as part of a bona fide un-
20 derwriting or investment banking activity and
21 such shares are held only for such period of
22 time as will permit the sale thereof on a reason-
23 able basis consistent with the nature of such ac-
24 tivity; and

1 “(B) during the period such shares are
2 held, the financial services holding company
3 does not directly or indirectly participate in the
4 day to day management or operation of the
5 company.

6 “(2) BOARD RULES.—The Board may establish
7 rules governing the acquisition and retention of
8 shares under this subsection, including limitations
9 governing the circumstances and time period such
10 shares may be held, in order to assure compliance
11 with the purposes of this Act, including the protec-
12 tion of insured depository institutions and the sepa-
13 ration of banking and commerce.

14 “(k) DEFINITIONS.—For purposes of this section:

15 “(1) CAPITAL STOCK AND SURPLUS.—The term
16 ‘capital stock and surplus’ has the same meaning as
17 in section 23A of the Federal Reserve Act.

18 “(2) COVERED TRANSACTION.—The term ‘cov-
19 ered transaction’ has the same meaning as in section
20 23A of the Federal Reserve Act.

21 “(3) SECURITY.—

22 “(A) IN GENERAL.—The term ‘security’
23 has the meaning given to that term in section
24 3(a)(10) of the Securities Exchange Act of
25 1934.

1 “(B) EXCEPTIONS.—For purposes of this
2 section, other than subsection (a), the term ‘se-
3 curity’ does not include any of the following:

4 “(i) A contract of insurance.

5 “(ii) A deposit account, savings ac-
6 count, certificate of deposit, or other de-
7 posit instrument issued by a depository in-
8 stitution.

9 “(iii) A share account issued by a sav-
10 ings association if the account is insured
11 by the Federal Deposit Insurance Corpora-
12 tion.

13 “(iv) A banker’s acceptance.

14 “(v) A letter of credit issued by a de-
15 pository institution.

16 “(vi) A debit account at a depository
17 institution arising from a credit card or
18 similar arrangement.

19 “(vii) A traditional loan or loan par-
20 ticipation (as determined by the Board).

21 “(C) BOARD’S AUTHORITY TO EXEMPT
22 TRADITIONAL BANKING PRODUCTS.—The Board
23 may, after consultation and consideration of the
24 views of the Securities and Exchange Commis-
25 sion, by regulation exempt from the definition

1 of 'security' a banking product that national
2 banks have traditionally and customarily origi-
3 nated or handled (such as mortgage notes) if
4 the exemption is consistent with the purposes of
5 this section.

6 “(D) DEFINITION FOR LIMITED PUR-
7 POSE.—The fact that a particular instrument is
8 excluded pursuant to subparagraphs (B) or (C)
9 from the definition of 'security' for purposes of
10 this section shall not be construed as finding or
11 implying that such instrument is or is not a 'se-
12 curity' for purposes of section 3(a)(10) of the
13 Securities Exchange Act of 1934.’.

14 (b) TRANSITION RULE FOR SECURITIES AFFILIATES
15 APPROVED UNDER SECTION 4(c)(8).—

16 (1) IN GENERAL.—Effective 18 months after
17 the date of enactment of this Act, no financial serv-
18 ices holding company may engage in, or retain the
19 shares of any company engaged in, underwriting or
20 dealing in securities based on the approval of an ap-
21 plication under section 4(c)(8) of the Bank Holding
22 Company Act of 1956—

23 (A) unless the financial services holding
24 company has obtained the Board's approval to

1 retain the shares of that company under section
2 10; or

3 (B) except underwriting or dealing in secu-
4 rities expressly specified by section 5136 of the
5 Revised Statutes as permissible for a national
6 bank to underwrite or deal in.

7 (2) EXTENDING TIME.—

8 (A) IN GENERAL.—The Board may, for
9 good cause shown, extend the time provided
10 under paragraph (1) for not more than 18
11 months.

12 (B) PENDING NOTICES.—If a financial
13 services holding company has filed a notice
14 under section 10(b) of the Bank Holding Com-
15 pany Act of 1956 not later than 180 days after
16 the date of enactment of this Act, paragraph
17 (1) shall not apply with respect to the company
18 engaged in such underwriting or dealing until
19 180 days after the Board has acted on the
20 notice.

21 (c) CONFORMING AMENDMENTS.—

22 (1) DEFINITIONS.—Section 2 of the Bank
23 Holding Company Act of 1956 (12 U.S.C. 1841) is
24 amended by adding at the end the following new
25 subsections:

1 “(n) SECURITIES AFFILIATE.—The term ‘securities
2 affiliate’ means any company—

3 “(1) that is (or is required to be) registered
4 under the Securities Exchange Act of 1934 as a
5 broker or dealer; and

6 “(2) the acquisition or retention of the shares
7 or assets of which the Board has approved under
8 section 10.

9 “(o) INSURED DEPOSITORY INSTITUTION.—The
10 term ‘insured depository institution’ has the meaning
11 given to that term in section 3 of the Federal Deposit In-
12 surance Act.

13 “(p) LEAD INSURED DEPOSITORY INSTITUTION.—
14 The term ‘lead insured depository institution’ shall mean
15 the largest insured depository institution controlled by the
16 financial services holding company, based on a comparison
17 of the average total assets controlled by each insured de-
18 pository institution during the previous 12-month period.

19 “(q) APPROPRIATE FEDERAL BANKING AGENCY.—
20 The term ‘appropriate Federal banking agency’ has the
21 same meaning as in section 3(q) of the Federal Deposit
22 Insurance Act.

23 “(r) CAPITAL TERMS.—

24 “(1) INSURED DEPOSITORY INSTITUTIONS.—

25 With respect to insured depository institutions, the

1 terms ‘well-capitalized,’ ‘adequately capitalized’ and
2 ‘undercapitalized’ have the meaning given those
3 terms in section 38(b) of the Federal Deposit Insur-
4 ance Act.

5 “(2) FINANCIAL SERVICES HOLDING COM-
6 PANY.—

7 “(A) ADEQUATELY CAPITALIZED.—A fi-
8 nancial services holding company is ‘adequately
9 capitalized’ if it meets the required minimum
10 level for each relevant capital measure estab-
11 lished by the Board for financial services hold-
12 ing companies;

13 “(B) WELL CAPITALIZED.—A financial
14 services holding company is ‘well capitalized’ if
15 it meets the required capital levels for well cap-
16 italized financial services holding companies es-
17 tablished by the Board.

18 “(3) OTHER CAPITAL TERMS.—The terms ‘Tier
19 1’ and ‘risk-weighted assets’ have the meaning given
20 those terms in the capital guidelines or regulations
21 established by the Board for financial services hold-
22 ing companies.

23 “(s) INSURED DEPOSITORY INSTITUTION FOR CER-
24 TAIN SECTIONS.—For purposes of section 2(p), section
25 4(j)(4), and section 10, the term ‘insured depository insti-

1 tution’ includes any branch, agency or commercial lending
2 company operated in the United States by a foreign bank
3 (as the terms ‘agency’, ‘branch’, ‘commercial lending com-
4 pany’, and ‘foreign bank’ are defined in section 1 of the
5 International Banking Act of 1978).

6 “(t) WELL MANAGED.—A company or depository in-
7 stitution is ‘well managed’ if—

8 “(1) at its most recent examination or subse-
9 quent review, the company or institution received—

10 “(A) one of the highest two composite rat-
11 ings; and

12 “(B) at least a satisfactory rating for man-
13 agement, if such rating is given; or

14 “(2) in the case of a company or depository in-
15 stitution that has not received an examination rat-
16 ing, the Board determines that the managerial re-
17 sources of the company or depository institution are
18 satisfactory.”.

19 (2) AMENDMENT REGARDING CONDITIONAL AP-
20 PROVAL OF NOTICES.—Section 4(a)(2) of the Bank
21 Holding Company Act of 1956 (12 U.S.C.
22 1843(a)(2)) is amended by striking “paragraph (8)”
23 and all that follows through “issued by the Board
24 under such paragraph” and inserting “section 10,
25 subsection (l) or subsection (c)(8), subject to all the

1 conditions specified in those provisions or in any
2 order or regulation issued by the Board under those
3 provisions”.

4 (3) AMENDMENT TO NOTICE PROCEDURES.—
5 Section 4(j) of the Bank Holding Company Act of
6 1956 (12 U.S.C. 1843(j)) is amended—

7 (A) in paragraph (1)(A) by striking “sub-
8 section (c)(8) or (a)(2)” and inserting in its
9 place “subsection (c)(8), (c)(15), (l), or (a)(2)”;

10 (B) in paragraph (1)(E) by striking “sub-
11 section (c)(8) or (a)(2)” and inserting in its
12 place “subsection (c)(8), (c)(15), (l), or (a)(2)”;

13 (C) by redesignating paragraphs (2)(B)
14 and (2)(C) as paragraphs (2)(C) and (2)(D) re-
15 spectively, and inserting a new paragraph
16 (2)(B) as follows:

17 “(B) CRITERIA FOR NOTICES INVOLVING
18 SECURITIES AFFILIATES.—In considering any
19 notice that involves the acquisition of shares of
20 a securities affiliate pursuant to section
21 4(c)(15), the Board shall apply the criteria and
22 safeguards contained in this paragraph and in
23 section 10.”

24 (d) AMENDMENT TO THE FEDERAL RESERVE ACT.—
25 Section 23B(b)(1)(B) of the Federal Reserve Act (12

1 U.S.C. 371c–l(b)(1)(B)) is amended by inserting “and for
2 30 days thereafter” after “during the existence of any un-
3 derwriting or selling syndicate”.

4 (e) EXEMPTION FROM SECTION 305(b) OF THE FED-
5 ERAL POWER ACT.—Section 305(b) of the Federal Power
6 Act (16 U.S.C. 825d(b)) shall not apply to any person
7 now holding or proposing to hold the position of officer
8 or director of a public utility and officer or director of
9 a bank, trust company, banking association, or firm per-
10 mitted by section 10 of the Bank Holding Company Act
11 of 1956 (as amended by subsection (a)) to underwrite or
12 participate in the marketing of securities (including com-
13 mercial paper) of a public utility, if that bank, trust com-
14 pany, banking association, or firm does not underwrite or
15 participate in the marketing of securities of the public util-
16 ity for which the person serves or proposes to serve as
17 an officer or director.

18 (f) RETENTION OF CERTAIN INVESTMENTS BY SECU-
19 RITIES COMPANIES AFFILIATING WITH INSURED DEPOSI-
20 TORY INSTITUTIONS.—Section 4 of the Bank Holding
21 Company Act (12 U.S.C. 1843) is amended by adding at
22 the end the following new subsection:

23 “(k) OWNERSHIP OF SHARES OF CERTAIN COMPA-
24 NIES BY SECURITIES COMPANIES THAT BECOME FINAN-
25 CIAL SERVICES HOLDING COMPANIES.—

1 “(1) NONCONFORMING FINANCIAL COMPA-
2 NIES.—Notwithstanding subsection (a), a financial
3 services holding company may retain direct or indi-
4 rect ownership or control of voting shares of any
5 company that engages solely in financial activities
6 that the Board has not authorized under this section
7 (and such other financial activities that the Board
8 has authorized) if—

9 “(A) the financial services holding com-
10 pany acquired the shares of such company or of
11 each company to which it is a successor more
12 than two years prior to the date that such fi-
13 nancial services holding company becomes a fi-
14 nancial services holding company;

15 “(B) the aggregate investment by the fi-
16 nancial services holding company in shares of
17 all such companies does not exceed 10 percent
18 of the total consolidated capital and surplus of
19 the financial services holding company on the
20 date that it becomes a financial services holding
21 company or on the date of any additional in-
22 vestment by the financial services holding com-
23 pany in such shares;

24 “(C) more than 50 percent of the business
25 of the financial services holding company for

1 each of the two calendar years prior to the date
2 it becomes a financial services holding company
3 involved securities activities described in sec-
4 tions 10(a)(1) and (2), excluding from such cal-
5 culation activities (other than securities activi-
6 ties) in which financial services holding compa-
7 nies were permitted to engage prior to the en-
8 actment of the Financial Services Competitive-
9 ness Act of 1995; and

10 “(D) such company continues to engage
11 only in activities that it conducted on the date
12 that such financial services holding company be-
13 comes a financial services holding company (or
14 other activities permitted under subsection
15 (c)(8) or section (10)).

16 “(2) NONFINANCIAL COMPANIES.—

17 “(A) IN GENERAL.—Notwithstanding sub-
18 section (a), a financial services holding company
19 that is described in paragraph (1)(C) may, for
20 a period of 5 years from the date that the com-
21 pany becomes a financial services holding com-
22 pany, retain direct or indirect ownership or con-
23 trol of voting shares of any company that the
24 financial services holding company owns or con-

1 tols on the date it becomes a financial services
2 holding company.

3 “(B) EXTENSION OF DIVESTITURE PE-
4 RIOD.—The Board may extend the period de-
5 scribed in subparagraph (A) for an additional
6 period not to exceed 5 years if the Board deter-
7 mines that such extension is necessary to avert
8 substantial loss to the financial services holding
9 company and finds that the financial services
10 holding company has made good faith efforts to
11 divest such shares.

12 “(C) NO EXPANSION OF NONFINANCIAL
13 COMPANIES PRIOR TO DIVESTITURE.—Unless
14 such acquisition or activity is permitted in ac-
15 cordance with section 4(c)—

16 “(i) no financial services holding com-
17 pany or company whose shares are owned
18 or controlled by a financial services holding
19 company pursuant to this paragraph (2)
20 may acquire any interest in or assets of
21 any company, and

22 “(ii) no company whose shares are
23 owned or controlled by a financial services
24 holding company pursuant to this para-
25 graph (2) may engage directly or indirectly

1 in any activity that the company did not
2 conduct on the day before the financial
3 services holding company registered as a
4 financial services holding company.

5 “(3) RESTRICTIONS ON JOINT MARKETING.—
6 No insured depository institution (and no subsidiary
7 of such institution) shall—

8 “(A) offer or market, directly or indirectly
9 through any arrangement, any product or serv-
10 ice of any affiliate whose shares are owned or
11 controlled by the financial services holding com-
12 pany pursuant to this subsection or section
13 10(j), or

14 “(B) permit any of its products or services
15 to be offered or marketed, directly or indirectly
16 through any arrangement, by or through any
17 affiliate whose shares are owned or controlled
18 by the financial services holding company pur-
19 suant to this subsection or section 10(j),

20 unless the product or service is permissible for finan-
21 cial services holding companies to provide under sec-
22 tion 10 or section 4(c)(8).”.

23 (g) AMENDMENT TO THE RIGHT TO FINANCIAL PRI-
24 VACY ACT.—Section 1112(e) of the Right to Financial
25 Privacy Act (12 U.S.C. 3412(e)) is amended as follows—

1 (1) by deleting “this chapter” and inserting in
2 its place “law”; and

3 (2) by adding “, examination reports” after “fi-
4 nancial records”.

5 (h) EXCEPTION TO RESTRICTION ON ASSET GROWTH
6 OF NONBANK BANKS.—Section 4(f)(3) of the Bank Hold-
7 ing Company Act of 1956 (12 U.S.C. 1843(f)(3)) is
8 amended—

9 (1) in subparagraph (B)(iv), by inserting “ex-
10 cept as provided in subparagraph (D),” before “in-
11 crease its assets”; and

12 (2) by adding at the end the following new sub-
13 paragraph:

14 “(D) EXCEPTION TO RESTRICTION ON
15 ASSET GROWTH.—

16 “(i) QUALIFICATION FOR EXCEP-
17 TION.—A bank controlled by a company
18 described in paragraph (1) shall not be
19 subject to the limitation contained in sub-
20 paragraph (B)(iv) if—

21 “(I) each insured depository in-
22 stitution controlled by such company
23 is and remains well-capitalized; and

24 “(II) such company engages, di-
25 rectly or indirectly, only in activities—

1 “(aa) permitted pursuant to
2 subsections 4(c)(8) or (15); and

3 “(bb) insurance activities,
4 subject to the limitations con-
5 tained in subsections (k) (1) and
6 (3) as if the company were a fi-
7 nancial services holding company;
8 and

9 “(III) the company has provided
10 at least 60 days prior written notice
11 to the Board and, during that period,
12 the Board has not disapproved the
13 proposal after applying the standards
14 provided in subsection (j)(2);

15 “(ii) EXCEPTION FROM DIVESTITURE
16 REQUIREMENT.—If any bank controlled by
17 a company that qualifies under clause (i)
18 ceases to be well capitalized, the company
19 shall divest control of such bank it controls
20 in accordance with paragraph (4) unless—

21 “(I) within 12 months after the
22 date that the bank first ceases to be
23 well capitalized, the capital of the
24 bank is restored to the well capitalized
25 level; and

1 “(II) thereafter the bank remains
2 well capitalized.”.

3 (i) APPLICATION OF SECURITIES FIREWALLS TO
4 NONBANK BANKS.—Section 4(f)(3)(B)(ii) of the Bank
5 Holding Company Act of 1956 (12 U.S.C.
6 1843(f)(3)(B)(ii)) is amended—

7 (1) in subclause (II), by striking “or” as it ap-
8 pears after the semicolon;

9 (2) in subclause (III), by inserting “or” after
10 the semicolon; and

11 (3) by adding at the end the following new
12 subclause:

13 “(IV) each of the following cri-
14 teria are met:

15 “(aa) the bank is well cap-
16 italized;

17 “(bb) more than 50 percent
18 of the consolidated business of
19 the company described in para-
20 graph (1) involved securities ac-
21 tivities described in sections
22 10(a) (1) and (2) for the preced-
23 ing two calendar years;

24 “(cc) such products or serv-
25 ices are offered or marketed only

1 to the extent permissible for
2 banks and securities affiliates
3 under section 10; and

4 “(dd) the bank and any af-
5 filiate of the bank that is en-
6 gaged in securities activities de-
7 scribed in section 10(a) comply
8 with the safeguards contained in
9 section 10(f) as if that affiliate
10 were a securities affiliate.”.

11 **SEC. 104. UNITARY THRIFT HOLDING COMPANIES.**

12 Section 10(c)(3) of the Home Owners’ Loan Act (12
13 U.S.C. 1467a(c)(3)) is amended—

14 (1) by inserting immediately before the first
15 sentence the following:

16 “(A) UNITARY THRIFT HOLDING COMPA-
17 NIES.—”;

18 (2) by redesignating subparagraphs (A) and
19 (B) as clauses (i) and (ii) and redesignating other
20 provisions of such subparagraphs accordingly; and

21 (3) by adding the following new subparagraph
22 (B):

23 “(B) STATUS AS A UNITARY THRIFT
24 HOLDING COMPANY.—The provisions of sub-
25 paragraph (A) shall only be applicable to sav-

1 ings and loan holding companies that controlled
2 savings associations pursuant to subparagraph
3 (A) as of January 4, 1995 and that continue to
4 control such savings associations.”.

5 **SEC. 105. SECURITIES COMPANY AFFILIATIONS OF FDIC-**
6 **INSURED BANKS.**

7 Section 18 of the Federal Deposit Insurance Act (12
8 U.S.C. 1828) is amended by adding at the end the follow-
9 ing new subsections:

10 “(s) SECURITIES AFFILIATIONS OF BANKS.—

11 “(1) IN GENERAL.—A bank shall not be an af-
12 filiate of any company that, directly or indirectly,
13 acts as an underwriter or dealer of any security, ex-
14 cept—

15 “(A) as provided in section 10 of the Bank
16 Holding Company Act of 1956; or

17 “(B) A company that underwrites or deal
18 only in securities expressly specified by section
19 5136 of the Revised Statutes as permissible for
20 a national bank to underwrite or deal in.

21 “(2) EXCEPTION.—This subsection does not
22 apply to—

23 “(A) an insured bank described in sub-
24 paragraph (D), (F), or (H) of section 2(c)(2) of

1 the Financial Services Holding Company Act of
2 1995;

3 “(B) a company held pursuant to section
4 25 or 25A of the Federal Reserve Act or section
5 4(c) (13) of the Financial Services Holding
6 Company Act; or

7 “(C) to a Federal branch or an insured
8 branch, as defined in section 3 of the Federal
9 Deposit Insurance Act.

10 “(3) GRANDFATHER PROVISION.—This sub-
11 section does not prohibit—

12 “(A) the continuation of an affiliation that
13 existed on January 1, 1995; or

14 “(B) any new affiliation by an insured
15 bank that has an affiliation that would be pro-
16 hibited if the affiliation were not covered by
17 subparagraph (A).

18 “(4) DEFINITIONS.—For purposes of this sub-
19 section:

20 “(A) AFFILIATE.—The term ‘affiliate’ has
21 the meaning given to that term in section 2(k)
22 of the Bank Holding Company Act of 1956.

23 “(B) COMPANY.—The term ‘company’ has
24 the meaning given to that term in section 2(b)
25 of the Bank Holding Company Act of 1956.

1 “(C) BROKER.—The term ‘broker’ has the
2 meaning given to that term in section 3(a)(4)
3 of the Securities Exchange Act of 1934.

4 “(D) DEALER.—The term ‘dealer’ has the
5 meaning given to that term in section 3(a)(5)
6 of the Securities Exchange Act of 1934.

7 “(E) SECURITY.—

8 “(i) IN GENERAL.—The term ‘secu-
9 rity’ has the meaning given to that term in
10 section 3(a)(10) of the Securities Ex-
11 change Act of 1934.

12 “(ii) EXCEPTIONS.—For purposes of
13 this subsection, the term ‘security’ does
14 not include any of the following:

15 “(I) A contract of insurance.

16 “(II) A deposit account, savings
17 account, certificate of deposit, or
18 other deposit instrument issued by a
19 depository institution.

20 “(III) A share account issued by
21 a savings association if the account is
22 insured under the Federal Deposit In-
23 surance Act.

24 “(IV) A banker’s acceptance.

1 “(V) A letter of Credit issued by
2 a depository institution.

3 “(VI) A debit account at a depos-
4 itory institution arising from a credit
5 card or similar arrangement.

6 “(VII) A traditional loan or loan
7 participation (as determined by the
8 Board).

9 “(iii) FEDERAL RESERVE BOARD’S
10 AUTHORITY TO EXEMPT TRADITIONAL
11 BANKING PRODUCTS.—The Board of Gov-
12 ernors of the Federal Reserve System may,
13 after consultation with and considering the
14 views of the Securities and Exchange Com-
15 mission, by regulation exempt from the
16 definition of ‘security’ a banking product
17 that national banks have traditionally and
18 customarily originated or handled (such as
19 mortgage notes) if the exemption is con-
20 sistent with the purposes of this sub-
21 section.

22 “(iv) DEFINITION FOR LIMITED PUR-
23 POSE.—The fact that a particular instru-
24 ment is excluded pursuant to clauses (ii) or
25 (iii) from the definition of ‘security’ for

1 purposes of this subsection shall not be
2 construed as finding or implying that such
3 instrument is or is not a ‘security’ for pur-
4 poses of section 3(a)(10) of the Securities
5 Exchange Act of 1934.

6 “(E) UNDERWRITER.—The term ‘under-
7 writer’ has the meaning given to that term in
8 section 2(11) of the Securities Act of 1933.

9 “(t) BROKER/DEALER REGISTRATION.—An insured
10 bank may not use the United States mails or any means
11 or instrumentality of interstate commerce to act as a
12 broker or dealer without registration under the Securities
13 Exchange Act of 1934, except to the extent permitted
14 under section 3(a)(4) or 3(a)(5), or unless otherwise ex-
15 empt pursuant to rules promulgated by the Securities and
16 Commission.”.

17 **SEC. 106. AUTHORITY TO TERMINATE GRANDFATHER**
18 **RIGHTS UNDER THE INTERNATIONAL BANK-**
19 **ING ACT OF 1978.**

20 Section 8(c) of the International Banking Act of
21 1978 (12 U.S.C. 3106(c)) is amended by adding at the
22 end the following new paragraph:

23 “(3) PARITY IN CONDUCT OF AUTHORIZED SE-
24 CURITIES ACTIVITIES.—

1 “(A) IN GENERAL.—Notwithstanding any
2 provision of paragraph (l) or any other provi-
3 sion of law, any authority conferred under this
4 subsection on any foreign bank or company
5 with respect to an activity of an affiliate en-
6 gaged in securities activities shall terminate 18
7 months after the Board determines that such
8 activity is authorized for financial services hold-
9 ing companies in the United States, except
10 that—

11 “(i) the foreign bank or company may
12 retain the shares of an affiliate engaged in
13 securities activities if, prior to the expira-
14 tion of such 18 month period, the foreign
15 bank or company has obtained the Board’s
16 approval under section 10 or section
17 4(c)(8) of the Bank Holding Company Act
18 to retain such shares, and

19 “(ii) the Board, for good cause shown,
20 may extend the termination period for an
21 additional period not to exceed 18 months.

22 “(B) EXTENSION TO OBTAIN REQUIRED
23 APPROVAL.—If the foreign bank or company
24 has filed a notice under section 10(b) of the
25 Bank Holding Company Act not later than 180

1 days after the Board has made a determination
2 under subparagraph (A), the effective date of
3 any termination of authority for that foreign
4 bank or company under subparagraph (A) shall
5 be 24 months after the Board has acted on the
6 notice.”.

7 **SEC. 107. EFFECT ON STATE LAWS PROHIBITING THE AF-**
8 **FILIATION OF BANKS AND SECURITIES COM-**
9 **PANIES.**

10 Section 7 of the Bank Holding Company Act of 1956
11 (12 U.S.C. 1846) is amended by inserting before the final
12 period the following: “, except that no State may prohibit
13 or limit the affiliation of a bank or financial services hold-
14 ing company with a securities affiliate solely because the
15 securities affiliate is engaged in activities described in
16 paragraph (1) or (2) of section 10(a) of this Act.”.

17 **SEC. 108. MUNICIPAL SECURITIES.**

18 At the end of section 5136 of the Revised Statutes
19 (12 U.S.C. 24(Seventh)), add the following new sentences:
20 “Notwithstanding any other provision of this paragraph,
21 a national banking association may deal in, underwrite,
22 and purchase for such association’s own account any obli-
23 gation of, or obligation guaranteed as to principal or inter-
24 est by, a State or of any political subdivision thereof, or

1 any agency or instrumentality of a State or any political
2 subdivision thereof, if the association—

3 “(1) is well capitalized (as defined in section
4 38(b) of the Federal Deposit Insurance Act),

5 “(2) engages in the business of banking,

6 “(3) has not been affiliated with a securities af-
7 filiate under section 10 of the Bank Holding Com-
8 pany Act of 1956 for more than 1 year, and

9 “(4) maintains its main office or any branch in
10 such State or political subdivision, or within 100
11 miles of such State or political subdivision.”.

12 **SEC. 109. INVESTMENT BANK HOLDING COMPANIES.**

13 (a) DEFINITIONS.—Section 2 of the Bank Holding
14 Company Act of 1956 (12 U.S.C. 1842) is amended by
15 adding at the end the following new subsections:

16 “(r) WHOLESALE FINANCIAL INSTITUTION.—The
17 term ‘wholesale financial institution’ means any institution
18 that is an uninsured state member bank authorized pursu-
19 ant to section 9B of the Federal Reserve Act.

20 “(s) INVESTMENT BANK HOLDING COMPANY.—The
21 term ‘investment bank holding company’ means any finan-
22 cial services holding company that controls or seeks to
23 control—

24 “(1) a wholesale financial institution, and

1 “(2) a company engaged in securities activities
2 pursuant to section 10.”.

3 (b) EXEMPTION.—Section 4 of the Bank Holding
4 Company Act of 1956 (12 U.S.C. 1843) is amended by
5 adding at the end the following new subsection:

6 “(l) PERMISSIBLE AFFILIATIONS FOR INVESTMENT
7 BANK HOLDING COMPANIES.—

8 “(1) FINANCIAL ACTIVITIES.—

9 “(A) ACTIVITIES AUTHORIZED.—An in-
10 vestment bank holding company may directly or
11 indirectly own or control shares of any company
12 the activities of which the Board has deter-
13 mined to be financial in nature (other than ac-
14 tivities expressly limited under subsection
15 (c)(8)), incidental to financial activity, or any
16 activity in compliance with subparagraph (B).

17 “(B) INCIDENTAL ACTIVITIES.—

18 “(i) IN GENERAL.—Notwithstanding
19 subparagraph (A), the aggregate invest-
20 ment by an investment bank holding com-
21 pany in shares of any companies that en-
22 gage in nonfinancial activities and financial
23 activities (other than those otherwise per-
24 mitted under this section) shall not exceed
25 10 percent of the total consolidated capital

1 and surplus of the investment bank holding
2 company.

3 “(ii) CROSS MARKETING RESTRIC-
4 TIONS.—A wholesale financial institution
5 shall not offer or market products or serv-
6 ices of an affiliate that are part of any
7 nonfinancial activities conducted pursuant
8 to subparagraph (B) or permit its products
9 or services to be offered or marketed in
10 connection with products and services of
11 an affiliate that are part of any non-
12 financial activities conducted pursuant to
13 subparagraph (B).

14 “(iii) USE OF COMMON NAME.—An in-
15 vestment bank holding company shall not
16 permit a wholesale financial institution to
17 adopt a name which is the same as or
18 similar to, or a variation of, the name or
19 title of an affiliate engaged in nonfinancial
20 activities pursuant to subparagraph (B).

21 “(C) SPECIAL RULE.—An investment bank
22 holding company that owns and controls shares
23 of a company pursuant to subparagraph (B)
24 may not also own or control shares of a com-
25 pany pursuant to subsection (k).

1 “(2) SECURITIES ACTIVITIES.—

2 “(A) INSTITUTIONS MUST BE WELL-CAP-
3 ITALIZED.—The Board shall disapprove a no-
4 tice under section 10 by an investment bank
5 holding company to acquire a securities affiliate
6 if any wholesale financial institution controlled
7 by the investment bank holding company is not
8 well capitalized or would not be well capitalized
9 following the transaction.

10 “(B) TRANSACTIONS WITH AFFILIATES.—

11 “(i) IN GENERAL.—A wholesale finan-
12 cial institution controlled by an investment
13 bank holding company shall be a ‘bank’ for
14 purposes of the provisions of sections 23A
15 and 23B of the Federal Reserve Act.

16 “(ii) OTHER RESTRICTIONS REGARD-
17 ING SECURITIES AFFILIATES DETERMINED
18 BY THE BOARD.—A securities affiliate and
19 a wholesale financial institution controlled
20 by an investment bank holding company
21 shall not be subject to the provisions of
22 section 10(f), except that the securities af-
23 filiate and wholesale financial institution
24 shall be subject to paragraphs (12) and
25 (13) of that section as if the wholesale fi-

1 nancial institution were an insured deposi-
2 tory institution.

3 “(3) LIMITATION ON AFFILIATION WITH IN-
4 SURED DEPOSITORY INSTITUTIONS.—An investment
5 bank holding company may not directly or indirectly
6 own or control—

7 “(A) any bank, other than a wholesale fi-
8 nancial institution;

9 “(B) any savings association;

10 “(C) any institution described in section
11 2(c)(2); or

12 “(D) any institution that accepts—

13 “(i) initial deposits of \$100,000 or
14 less, other than on an incidental or occa-
15 sional basis, or

16 “(ii) deposits that are insured under
17 the Federal Deposit Insurance Act.”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) INSURANCE REQUIREMENT IN THE BANK
20 HOLDING COMPANY ACT.—Section 3(e) of the Bank
21 Holding Company Act of 1956 (12 U.S.C. 1842(e))
22 is amended by adding at the end the following:
23 “‘This subsection does not apply to a wholesale fi-
24 nancial institution that is controlled by an invest-

1 ment bank holding company that controls no banks
2 other than wholesale financial institutions.”

3 (2) APPROPRIATE FEDERAL BANKING AGEN-
4 CY.—Section 3(q)(2)(A) of the Federal Deposit In-
5 surance Act (12 U.S.C. 1813(q)(2)(A)) is amended
6 to read as follows:

7 “(A) any State member insured bank (ex-
8 cept a District bank) and wholesale financial in-
9 stitution as authorized pursuant to section 9B
10 of the Federal Reserve Act,”.

11 **SEC. 110. CONFORMING AMENDMENTS FOR INVESTMENT**
12 **BANK HOLDING COMPANIES.**

13 (a) WHOLESALE FINANCIAL INSTITUTIONS.—The
14 Federal Reserve Act (12 U.S.C. 221 et seq.) is amended
15 by inserting after section 9A the following new section:

16 **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

17 “(a) APPLICATION FOR MEMBERSHIP AS WHOLESALE
18 FINANCIAL INSTITUTION.—

19 “(1) APPLICATION REQUIRED.—Any bank in-
20 corporated by special law of any State, or organized
21 under the general laws of any State, may apply to
22 the Board of Governors of the Federal Reserve Sys-
23 tem to subscribe to the stock of the Federal Reserve
24 bank organized within the district where the apply-
25 ing bank is located as a wholesale financial institu-

1 tion. Such application shall be treated as an applica-
2 tion under, and shall be subject to the provisions of,
3 section 9.

4 “(2) APPROVAL OF MEMBERSHIP.—No bank
5 may become a wholesale financial institution un-
6 less—

7 “(A) the Board has approved an applica-
8 tion by the bank, under such rules and regula-
9 tions and subject to such conditions and re-
10 quirements as the Board may prescribe, to be
11 a wholesale financial institution; and

12 “(B) in the case of a bank that is insured
13 under the Federal Deposit Insurance Act, the
14 bank has met all requirements under that Act
15 for voluntary termination of deposit insurance.

16 “(b) GENERAL REQUIREMENTS APPLICABLE TO
17 WHOLESALE FINANCIAL INSTITUTIONS.—

18 “(1) FEDERAL RESERVE ACT.—Except as oth-
19 erwise provided in this section, wholesale financial
20 institutions shall be member banks and shall be sub-
21 ject to the provisions of this Act that apply to mem-
22 ber banks to the same extent and in the same man-
23 ner as State member insured banks, except that a
24 wholesale financial institution may only terminate
25 membership under this Act with the prior written

1 approval of the Board and on terms and conditions
2 that the Board determines are appropriate to carry
3 out the purposes of this Act.

4 “(2) PROMPT CORRECTIVE ACTION.—A whole-
5 sale financial institution shall be deemed to be an in-
6 sured depository institution for purposes of section
7 38 of the Federal Deposit Insurance Act except
8 that—

9 “(A) the relevant capital levels and capital
10 measures for each capital category shall be the
11 levels specified by the Board for wholesale fi-
12 nancial institutions in accordance with sub-
13 section (c);

14 “(B) the provisions applicable to well cap-
15 italized insured depository institutions shall be
16 inapplicable to wholesale financial institutions;

17 “(C) the provisions authorizing or requir-
18 ing an institution to be placed into receivership
19 shall not apply to a wholesale financial institu-
20 tion, and, in its place, the Board is authorized
21 or required, as the case may be, to terminate
22 the wholesale financial institution’s membership
23 in the Federal Reserve System or, where pro-
24 vided in section 38 of the Federal Deposit In-
25 surance Act, place the bank into

1 conservatorship and, in the Board's discretion,
2 terminate the bank's membership; and

3 “(D) for purposes of applying the provi-
4 sions of section 38 of the Federal Deposit In-
5 surance Act to wholesale financial institutions,
6 all references to the appropriate Federal bank-
7 ing agency or to the Corporation in that section
8 shall be deemed to be references to the Board.

9 “(3) ENFORCEMENT AUTHORITY.—Sections 7
10 (j) and (k), subsections (b) through (n), (s), (u), and
11 (v) of section 8, and section 19 of the Federal De-
12 posit Insurance Act shall apply to a wholesale finan-
13 cial institution in the same manner and to the same
14 extent as they apply to State member insured banks
15 and any reference in such sections to an insured de-
16 pository institution shall also be deemed to be a ref-
17 erence to a wholesale financial institution.

18 “(4) CERTAIN OTHER STATUTES APPLICA-
19 BLE.—A wholesale financial institution shall be
20 deemed to be a banking institution and the Board
21 shall be the appropriate Federal banking agency for
22 such bank and all of its affiliates for purposes of the
23 International Lending Supervision Act.

24 “(5) BANK MERGER ACT.—A wholesale finan-
25 cial institution shall be subject to the provisions of

1 the Bank Merger Act in the same manner as if the
2 wholesale financial institution were a State member
3 insured bank for purposes of that Act.

4 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO
5 WHOLESALE FINANCIAL INSTITUTIONS.—

6 “(1) LIMITATIONS ON DEPOSITS.—

7 “(A) MINIMUM AMOUNT.—Pursuant to
8 regulations of the Board, no wholesale financial
9 institution shall receive initial deposits of
10 \$100,000 or less, other than on an incidental
11 and occasional basis and where such deposits in
12 no event represent more than 5 percent of the
13 institution’s total deposits.

14 “(B) NO DEPOSIT INSURANCE.—No depos-
15 its held by a wholesale financial institution shall
16 be insured deposits under the Federal Deposit
17 Insurance Act.

18 “(C) ADVERTISING AND DISCLOSURE.—
19 The Board shall prescribe regulations pertain-
20 ing to advertising and disclosure by wholesale
21 financial institutions to ensure that each deposi-
22 tor is notified that deposits at the wholesale fi-
23 nancial institution are not federally insured or
24 otherwise guaranteed by the United States Gov-
25 ernment.

1 “(2) SPECIAL CAPITAL REQUIREMENTS APPLI-
2 CABLE TO WHOLESALE FINANCIAL INSTITUTIONS.—

3 “(A) MINIMUM CAPITAL LEVELS.—

4 “(i) IN GENERAL.—The Board shall,
5 by regulation, adopt capital requirements
6 for wholesale financial institutions—

7 “(I) to account for the status of
8 wholesale financial institutions as in-
9 stitutions that accept deposits that
10 are not insured under the Federal De-
11 posit Insurance Act; and

12 “(II) to provide for the safe and
13 sound operation of the wholesale fi-
14 nancial institution without undue risk
15 to creditors or other persons, includ-
16 ing Federal Reserve banks, engaged
17 in transactions with the bank.

18 “(ii) MINIMUM LEVERAGE RATIO.—
19 The minimum leverage ratio of tier one
20 capital to total assets of wholesale financial
21 institutions shall be not less than the level
22 required for a State member insured bank
23 to be well capitalized.

24 “(B) CAPITAL CATEGORIES FOR PROMPT
25 CORRECTIVE ACTION.—For purposes of apply-

1 ing the provisions of section 38 of Federal De-
2 posit Insurance Act, the Board shall, by regula-
3 tion, establish, for each relevant capital meas-
4 ure specified by the Board under subparagraph
5 (A), the levels at which a wholesale financial
6 institution is adequately capitalized,
7 undercapitalized, significantly undercapitalized,
8 and critically undercapitalized.

9 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
10 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-
11 tion to any requirements otherwise applicable to
12 State member banks or otherwise applicable under
13 this section, the Board may prescribe, by rule or
14 order, for wholesale financial institutions—

15 “(A) limitations on transactions with affili-
16 ates to prevent an affiliate from gaining access
17 to, or the benefits of, credit from a Federal Re-
18 serve bank, including overdrafts at a Federal
19 Reserve bank;

20 “(B) special clearing balance requirements;
21 and

22 “(C) any additional requirements that the
23 Board determines to be appropriate or nec-
24 essary to—

1 “(i) promote the safety and soundness
2 of the wholesale financial institution, or

3 “(ii) protect creditors and other per-
4 sons, including Federal Reserve banks, en-
5 gaged in transactions with the wholesale fi-
6 nancial institution.

7 “(4) EXEMPTIONS FOR WHOLESALE FINANCIAL
8 INSTITUTIONS.—The Board may, by rule or order,
9 exempt any wholesale financial institution from any
10 provision applicable to a State member bank that is
11 not a wholesale financial institution, provided that
12 the Board finds that such exemption is not incon-
13 sistent with—

14 “(A) the promotion of the safety and
15 soundness of the wholesale financial institution;
16 and

17 “(B) the protection of creditors and other
18 persons, including Federal Reserve banks, en-
19 gaged in transactions with the wholesale finan-
20 cial institution.

21 “(5) NO EFFECT ON OTHER PROVISIONS.—This
22 section shall not be construed to limit the Board’s
23 authority over member banks under any other provi-
24 sion of law, or to create any obligation for any Fed-
25 eral Reserve bank to make, increase, renew, or ex-

1 tend any advances or discount under this Act to any
2 member bank or other depository institution.

3 “(d) CONSERVATORSHIP AUTHORITY.—The Board is
4 authorized to appoint a conservator to take possession and
5 control of a wholesale financial institution to the same ex-
6 tent and in the same manner as the Comptroller of the
7 Currency is authorized to appoint a conservator for a na-
8 tional bank under section 203 of the Bank Conservation
9 Act.

10 “(e) DEFINITIONS.—For purposes of this section—

11 “(1) the term ‘wholesale financial institution’
12 means a bank whose application to become an unin-
13 sured State member bank has been approved by the
14 Board of Governors of the Federal Reserve System
15 under this section;

16 “(2) the term ‘deposit’ has the meaning given
17 to such term by the Board under the Federal Re-
18 serve Act; and

19 “(3) the term ‘State member insured bank’
20 means a State member bank, the deposits of which
21 are insured under the Federal Deposit Insurance
22 Act.

23 “(f) EXCLUSIVE JURISDICTION.—Section 43 (c) and
24 (e) of the Federal Deposit Insurance Act (12 U.S.C.
25 1831t) shall not apply to wholesale financial institutions.”.

1 (b) VOLUNTARY TERMINATION OF INSURED STATUS
2 BY CERTAIN INSTITUTIONS.—

3 (1) SECTION 8 DESIGNATIONS.—Section 8 of
4 the Federal Deposit Insurance Act (12 U.S.C. 1818)
5 is amended—

6 (A) in the section heading, by inserting
7 “**INVOLUNTARY**” after “**SEC. 8**”; and

8 (B) in subsection (a)—

9 (i) by striking paragraph (1); and

10 (ii) by redesignating paragraphs (2)
11 through (9) as paragraphs (1) through (8),
12 respectively.

13 (2) VOLUNTARY TERMINATION OF INSURED
14 STATUS.—The Federal Deposit Insurance Act (12
15 U.S.C. 1811 et seq.) is amended by inserting after
16 section 8 the following new section:

17 “**SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**
18 **SURED DEPOSITORY INSTITUTION.**

19 “(a) IN GENERAL.—Except as provided in subsection
20 (b), an insured State-chartered bank or a national bank
21 may voluntarily terminate its status as an insured deposi-
22 tory institution in accordance with regulations of the Cor-
23 poration if—

24 “(1) such institution provides written notice of
25 its intent to terminate its insured status—

1 “(A) to the Corporation and to the Board
2 of Governors of the Federal Reserve System,
3 not less than 6 months before the effective date
4 of such termination; and

5 “(B) to its depositors, not less than 6
6 months before the effective date of such termi-
7 nation; and

8 “(2) either—

9 “(A) the deposit insurance fund of which
10 such bank is a member equals or exceeds the
11 fund’s designated reserve ratio as set forth in
12 section 7(b)(2)(A)(iv) of the Federal Deposit
13 Insurance Act (12 U.S.C. 1817(b)(2)(A)(iv)) as
14 of the date the bank provides a written notice
15 of its intent to terminate its insured status and
16 the Corporation determines that the fund will
17 equal or exceed its designated reserve ratio for
18 the two semiannual assessment periods imme-
19 diately following such date; or

20 “(B) the Corporation and the Board of
21 Governors of the Federal Reserve System ap-
22 prove termination of the bank’s insured status
23 and such bank pays the exit fee prescribed by
24 paragraph (e) of this section.

1 “(b) EXCEPTION.—The option to terminate insured
2 status under subsection (a) shall not be available to—

3 “(1) an insured savings association;

4 “(2) an insured branch that is required to be
5 insured under subsection (a) or (b) of section 6 of
6 the International Banking Act of 1978; or

7 “(3) any institution described in section 2(c)(2)
8 of the Bank Holding Company Act of 1956.

9 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—
10 A depository institution that voluntarily elects to termi-
11 nate its insured status under subsection (a) shall not re-
12 ceive insurance of any of its deposits or any other assist-
13 ance authorized under this Act after the period specified
14 in subsection (f)(1).

15 “(d) INSTITUTION MUST BECOME WHOLESALE FI-
16 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
17 ACTIVITIES.—Any institution that voluntarily terminates
18 its status as an insured depository institution under this
19 section may not, upon termination of insurance, accept
20 any deposits unless the institution is a wholesale financial
21 institution under section 9B of the Federal Reserve Act.

22 “(e) EXIT FEES.—

23 “(1) IN GENERAL.—Any institution that volun-
24 tarily terminates its status as an insured depository
25 institution under this section shall pay an exit fee in

1 an amount that the Corporation determines is suffi-
2 cient to account for the institution's pro rata share
3 of the amount (if any) which would be required to
4 restore the relevant deposit insurance fund to the
5 fund's designated reserve ratio as set forth in sec-
6 tion 7(b)(2)(A)(iv) of the Federal Deposit Insurance
7 Act as of the date the bank provides a written notice
8 of its intent to terminate its insured status.

9 “(2) PROCEDURES.—The Corporation shall pre-
10 scribe, by regulation, procedures for assessing any
11 exit fee under this subsection.

12 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED
13 AS OF TERMINATION.—

14 “(1) TRANSITION PERIOD.—The insured depos-
15 its of each depositor in a State-chartered bank or a
16 national bank on the effective date of the voluntary
17 termination of the institution's insured status, less
18 all subsequent withdrawals from any deposits of
19 such depositor, shall continue to be insured for a pe-
20 riod of not less than 6 months nor more than 2
21 years, within the discretion of the Corporation. Dur-
22 ing such period, no additions to any such deposits,
23 and no new deposits in the depository institution
24 made after the effective date of such termination
25 shall be insured by the Corporation.

1 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
2 AND DUTIES.—During the period specified in para-
3 graph (1), a depository institution shall continue to
4 pay assessments required under this Act as if it
5 were an insured depository institution. Such deposi-
6 tory institution shall, in all other respects, be subject
7 to the authority of the Corporation and the duties
8 and obligations of an insured depository institution
9 during such period as provided in this Act, and in
10 the event that the depository institution is closed
11 due to an inability to meet the demands of its de-
12 positors during such period, the Corporation shall
13 have the same powers and rights with respect to
14 such depository institution as in the case of an in-
15 sured depository institution.

16 “(g) ADVERTISEMENTS.—

17 “(1) IN GENERAL.—A depository institution
18 that voluntarily terminates its insured status under
19 this section shall not advertise or hold itself out as
20 having insured deposits, except that it may advertise
21 the temporary insurance of deposits under sub-
22 section (f) if, in connection with any such advertise-
23 ment, it shall also state with equal prominence that
24 additions to deposits and new deposits made after
25 the effective date of the termination are not insured.

1 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
2 AND SECURITIES.—Any certificate of deposit or
3 other obligation or security issued by a State-char-
4 tered bank or a national bank after the effective
5 date of the voluntary termination of its insured sta-
6 tus under this section shall be accompanied by a
7 conspicuous, prominently displayed notice that such
8 certificate of deposit or other obligation or security
9 is not insured under this Act.

10 “(h) NOTICE REQUIREMENTS.—

11 “(1) NOTICE TO THE CORPORATION.—The no-
12 tice to the Corporation of an institution’s intent to
13 terminate its insured status required under sub-
14 section (a) shall be in such form as the Corporation
15 may require.

16 “(2) NOTICE TO DEPOSITORS.—The notice to
17 depositors of an institution’s intent to terminate its
18 insured status required under subsection (a) shall
19 be—

20 “(A) at such depositor’s last address of
21 record with the institution; and

22 “(B) in such manner and form as the Cor-
23 poration finds to be necessary and appropriate
24 for the protection of depositors.”.

1 **SEC. 111. EFFECTIVE DATE.**

2 The amendments made by this subtitle shall become
3 effective 90 days after the date of enactment of this Act.

4 **Subtitle B—Brokers and Dealers**

5 **SEC. 120. DEFINITION OF BROKER.**

6 Section 3(a)(4) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

8 “(4) ‘BROKER’.—

9 “(A) IN GENERAL.—The term ‘broker’
10 means any person engaged in the business of
11 effecting transactions in securities for the ac-
12 count of others.

13 “(B) EXCLUSION OF BANKS.—The term
14 ‘broker’ does not include a bank unless such
15 bank publicly solicits the business of effecting
16 securities transactions for the account of others
17 or is compensated for such business by the pay-
18 ment of commissions or similar remuneration
19 based on effecting transactions in securities
20 (other than fees calculated as a percentage of
21 assets under management) in excess of the
22 bank’s incremental costs directly attributable to
23 effecting such transactions (hereafter referred
24 to as ‘incentive compensation’).

25 “(C) EXEMPTION FOR CERTAIN BANK AC-
26 TIVITIES.—A bank shall not be deemed to be a

1 ‘broker’ because it engages in any of the follow-
2 ing activities:

3 “(i) THIRD PARTY BROKERAGE AR-
4 RANGEMENTS.—The bank enters into a
5 contractual or other arrangement with a
6 broker or dealer registered under this title
7 under which the broker or dealer offers
8 brokerage services on or off the premises
9 of the bank if—

10 “(I) such broker or dealer is
11 clearly identified as the person per-
12 forming the brokerage services;

13 “(II) such broker or dealer per-
14 forms brokerage services in an area
15 that is clearly marked and physically
16 separate from the retail deposit-taking
17 activities of the bank;

18 “(III) any materials used to ad-
19 vertise or promote the availability of
20 brokerage services under the contrac-
21 tual or other arrangement are ap-
22 proved by the broker or dealer for
23 compliance with the Federal securities
24 laws prior to distribution and are

1 deemed to be the materials of the
2 broker or dealer;

3 “(IV) bank employees perform
4 only clerical or ministerial functions in
5 connection with brokerage trans-
6 actions, unless such employees are as-
7 sociated persons of a broker or dealer
8 and are qualified pursuant to the re-
9 quirements of a self-regulatory organi-
10 zation;

11 “(V) bank employees do not re-
12 ceive incentive compensation for any
13 brokerage activities unless such em-
14 ployees are associated persons of a
15 broker or dealer and are qualified
16 pursuant to the requirements of a
17 self-regulatory organization;

18 “(VI) such services are provided
19 by the broker or dealer on a basis in
20 which all customers that receive such
21 services are fully disclosed to that
22 broker or dealer; and

23 “(VII) the broker or dealer in-
24 forms each customer that the broker-
25 age services are provided by the

1 broker or dealer and not by the bank
2 and that the securities are not guar-
3 anteed by the bank, the Federal De-
4 posit Insurance Corporation, or any
5 other Federal or State deposit guar-
6 antee fund relating to banks.

7 “(ii) TRUST ACTIVITIES.—The bank
8 engages in trust activities (including
9 effecting transactions in the course of such
10 trust activities) permissible for national
11 banks under the first section of the Act of
12 September 28, 1962 or for State banks
13 under relevant State trust statutes or law
14 (including securities safekeeping, self-di-
15 rected individual retirement accounts, or
16 managed agency accounts or other func-
17 tionally equivalent accounts of a bank) un-
18 less the bank—

19 “(I) publicly solicits brokerage
20 business, other than by advertising
21 that it effects transactions in securi-
22 ties in conjunction with advertising its
23 other trust activities; or

1 “(II) receives incentive com-
2 pensation for such brokerage activi-
3 ties.

4 “(iii) PERMISSIBLE SECURITIES
5 TRANSACTIONS.—The bank effects trans-
6 actions in exempted securities, other than
7 municipal securities, or in commercial
8 paper, bankers acceptances, commercial
9 bills, qualified Canadian Government obli-
10 gations as defined in section 5136 of the
11 Revised Statutes, obligations of the Wash-
12 ington Metropolitan Area Transit Author-
13 ity which are guaranteed by the Secretary
14 of Transportation under section 9 of the
15 National Capital Transportation Act of
16 1969, obligations of the North American
17 Development Bank, and obligations of any
18 local public agency (as defined in section
19 110(h) of the Housing Act of 1949) or any
20 public housing agency (as defined in the
21 United States Housing Act of 1937) that
22 are expressly specified by section 5136 of
23 the Revised Statutes as permissible for a
24 national bank to underwrite or deal in.

1 “(iv) MUNICIPAL SECURITIES.—The
2 bank effects transactions in municipal se-
3 curities, and has not been affiliated with a
4 securities affiliate under section 10 of the
5 Financial Services Holding Company Act
6 of 1995 for more than 1 year.

7 “(v) EMPLOYEE AND SHAREHOLDER
8 BENEFIT PLANS.—The bank effects trans-
9 actions as part of any bonus, profit-shar-
10 ing, pension, retirement, thrift, savings, in-
11 centive, stock purchase, stock ownership,
12 stock appreciation, stock option, dividend
13 reinvestment, or similar plan for employees
14 or shareholders of an issuer or its subsidi-
15 aries.

16 “(vi) SWEEP ACCOUNTS.—The bank
17 effects transactions as part of a program
18 for the investment or reinvestment of bank
19 deposit funds into any no-load, open-end
20 management investment company reg-
21 istered under the Investment Company Act
22 of 1940 that holds itself out as a money
23 market fund.

24 “(vii) AFFILIATE TRANSACTIONS.—
25 The bank effects transactions for the ac-

1 count of any affiliate of the bank, as de-
2 fined in section 2 of the Financial Services
3 Holding Company Act of 1995.

4 “(viii) PRIVATE SECURITIES OFFER-
5 INGS.—The bank—

6 “(I) effects sales as part of a pri-
7 mary offering of securities by an is-
8 suer, not involving a public offering,
9 pursuant to section 3(b), 4(2), or 4(6)
10 of the Securities Act of 1933 and the
11 rules and regulations issued there-
12 under, other than securities backed by
13 or representing an interest in obliga-
14 tions originated or purchased by the
15 bank, its affiliates, or its subsidiaries
16 unless those securities are described
17 in section 3(a)(5)(B)(ii)(IV) (aa) or
18 (bb);

19 “(II) effects such sales exclu-
20 sively to an accredited investor, as de-
21 fined in section 3 of the Securities Act
22 of 1933; and

23 “(III) if affiliated with a securi-
24 ties affiliate, as provided under sec-
25 tion 10 of the Financial Services

1 Holding Company Act of 1995, has
2 not been so affiliated for more than 1
3 year.

4 “(ix) DE MINIMIS EXEMPTION.—If the
5 bank does not have a subsidiary or affiliate
6 registered as a broker or dealer under sec-
7 tion 15, the bank effects, other than in
8 transactions referenced in clauses (i)
9 through (viii), not more than—

10 “(I) 800 transactions in any cal-
11 endar year in securities for which a
12 ready market exists, and

13 “(II) 200 other transactions in
14 securities in any calendar year.

15 “(x) SAFEKEEPING AND CUSTODY
16 SERVICES.—The bank acts as an
17 intermediary in the safekeeping of securi-
18 ties or the provision of custody services in
19 respect of securities, including the exercise
20 of warrants or other rights.

21 “(ix) CLEARANCE AND SETTLE-
22 MENT.—The bank acts as an intermediary
23 in the clearance and settlement of trans-
24 actions in securities.

1 “(xii) SECURITIES LENDING.—The
 2 bank acts as an intermediary in the lend-
 3 ing and borrowing of securities or in the
 4 investment of cash collateral pledged in
 5 connection with any securities borrowing.

6 “(xiii) COLLATERAL AGENCY SERV-
 7 ICES.—The bank acts as an intermediary
 8 in the pledging, sale subject to a resale
 9 agreement of securities.

10 “(D) EXEMPTION FOR ENTITIES SUBJECT
 11 TO SECTION 15(e).—The term ‘broker’ does not
 12 include a bank that is subject to—

13 “(i) section 15(e); and

14 “(ii) such restrictions and require-
 15 ments as the Commission deems appro-
 16 prium.”.

17 **SEC. 121. DEFINITION OF DEALER.**

18 Section 3(a)(5) of the Securities Exchange Act of
 19 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

20 “(5) ‘DEALER’.—

21 “(A) IN GENERAL.—The term ‘dealer’
 22 means any person engaged in the business of
 23 buying and selling securities for his own ac-
 24 count through a broker or otherwise.

1 “(B) EXCEPTIONS.—Such term does not
2 include—

3 “(i) a person that buys or sells securi-
4 ties for his or her own account, either indi-
5 vidually or in a fiduciary capacity, but not
6 as a part of a regular business; or

7 “(ii) a bank, to the extent that the
8 bank—

9 “(I) buys and sells commercial
10 paper, bankers acceptances, exempted
11 securities (other than municipal secu-
12 rities), qualified Canadian Govern-
13 ment obligations as defined in section
14 5136 of the Revised Statutes, obliga-
15 tions of the Washington Metropolitan
16 Area Transit Authority which are
17 guaranteed by the Secretary of Trans-
18 portation under section 9 of the Na-
19 tional Capital Transportation Act of
20 1969, obligations of the North Amer-
21 ican Development Bank, and obliga-
22 tions of any local public agency (as
23 defined in section 110(h) of the Hous-
24 ing Act of 1949) or any public hous-
25 ing agency (as defined in the United

1 States Housing Act of 1937) that are
2 expressly specified by section 5136 of
3 the Revised Statutes as permissible
4 for a national bank to underwrite or
5 deal in;

6 “(II) buys and sells municipal se-
7 curities and has not been affiliated
8 with a securities affiliate, as provided
9 under section 10 of the Financial
10 Services Holding Company Act of
11 1995 for more than 1 year;

12 “(III) buys and sells securities
13 for investment purposes for the bank
14 or for accounts for which the bank
15 acts as a trustee or fiduciary; or

16 “(IV) has not been affiliated with
17 a securities affiliate under section 10
18 of the Financial Services Holding
19 Company Act of 1995 for more than
20 1 year and engages in the issuance or
21 sale through a grantor trust or other-
22 wise of—

23 “(aa) securities backed by or
24 representing an interest in 1–4
25 family residential mortgages

1 originated or purchased by the
2 bank, its affiliates, or its subsidi-
3 aries; or

4 “(bb) securities backed by or
5 representing an interest in
6 consumer receivables or
7 consumer leases originated or
8 purchased by the bank, its affili-
9 ates, or its subsidiaries.”.

10 **SEC. 122. POWER TO EXEMPT FROM THE DEFINITIONS OF**
11 **BROKER AND DEALER.**

12 Section 3 of the Securities Exchange Act of 1934 (15
13 U.S.C. 78c) is amended by adding at the end the follow-
14 ing:

15 “(e) EXEMPTION FROM DEFINITION OF BROKER OR
16 DEALER.—The Commission, by regulation or order, upon
17 its own motion or upon application, may conditionally or
18 unconditionally exclude any person or class of persons
19 from the definitions of ‘broker’ or ‘dealer’, if the Commis-
20 sion finds that such exclusion is consistent with the public
21 interest, the protection of investors, and the purposes of
22 this title.”.

23 **SEC. 123. MARGIN REQUIREMENTS.**

24 (a) Section 7(d) of the Securities Exchange Act of
25 1934 (15 U.S.C. 15g(d)) is amended by—

- 1 (1) deleting the word “or” after clause (D);
- 2 (2) redesignating clause (E) as clause (F); and
- 3 (3) inserting a new clause (E) as follows:

4 “(E) to a loan to a broker or dealer by a
5 member bank or any other person that has en-
6 tered into an agreement pursuant to section
7 8(a) hereof if the proceeds of the loan are to be
8 used in the ordinary course of the broker’s or
9 dealer’s business other than for the purpose of
10 funding the purchase of securities for the ac-
11 count of such broker or dealer, or”.

12 (b) Section 8(a) of the Securities and Exchange Act
13 of 1934 is amended:

14 (1) by deleting the phrase “nonmember bank”
15 in clause (2) and replacing it with the phrase “per-
16 son other than a member bank”; and

17 (2) by deleting the phrase “such bank” in the
18 second sentence and replacing it with the phrase
19 “such person”.

20 **SEC. 124. EFFECTIVE DATE.**

21 This subtitle shall become effective 270 days after the
22 date of enactment of this Act.

1 **Subtitle C—Bank Investment Company**
2 **Activities**

3 **SEC. 130. CUSTODY OF INVESTMENT COMPANY ASSETS BY**
4 **AFFILIATED BANK.**

5 (a) MANAGEMENT COMPANIES.—Section 17(f) of the
6 Investment Company Act of 1940 (15 U.S.C. 80a–17(f))
7 is amended—

8 (1) by redesignating paragraphs (1), (2), and
9 (3) as subparagraphs (A), (B), and (C), respectively;

10 (2) by designating the five sentences of such
11 subsection as paragraphs (1) through (5), respec-
12 tively, and by indenting those paragraphs appro-
13 priately; and

14 (3) by adding at the end the following new
15 paragraph:

16 “(6) Notwithstanding paragraph (l)(A), if a
17 bank described in paragraph (1) or an affiliated per-
18 son of such bank is an affiliated person, promoter,
19 organizer, or sponsor of, or principal underwriter for
20 the registered company, such bank may serve as cus-
21 todian under this subsection in accordance with such
22 rules, regulations, or orders as the Commission may
23 prescribe, consistent with the protection of investors,
24 after consulting in writing with the appropriate Fed-

1 eral banking agency, as defined in section 3 of Fed-
2 eral Deposit Insurance Act.”.

3 (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(l) of
4 the Investment Company Act of 1940 (15 U.S.C. 80a–
5 26(a)(l)) is amended by inserting after “bank” the follow-
6 ing: “not affiliated with such underwriter or depositor, or
7 if such bank is so affiliated, only in accordance with such
8 regulations or orders as the Commission may prescribe,
9 consistent with the protection of investors, after consulting
10 in writing with the appropriate Federal banking agency,
11 as defined in section 3 of the Federal Deposit Insurance
12 Act”.

13 (c) FIDUCIARY DUTY OF CUSTODIAN.—Section 36(a)
14 of the Investment Company Act of 1940 (15 U.S.C. 80a–
15 35(a)) is amended—

16 (1) in paragraph (1), by striking “or” at the
17 end;

18 (2) in paragraph (2), by striking the period at
19 the end and inserting “; or”; and

20 (3) by inserting after paragraph (2) the follow-
21 ing:

22 “(3) as custodian.”.

1 **SEC. 131. AFFILIATED TRANSACTIONS.**

2 (a) INDEBTEDNESS TO AFFILIATED PERSON.—Sec-
3 tion 10(f) of the Investment Company Act of 1940 (15
4 U.S.C. 80a–10(f) is amended in the first sentence—

5 (1) by inserting “(1)” before “a principal un-
6 derwriter”; and

7 (2) by inserting before the period “, or (2) the
8 proceeds of which will be used to retire an indebted-
9 ness owed to an affiliated person of such registered
10 company”.

11 (b) AFFILIATED PERSON OF INVESTMENT COM-
12 PANY.—Section 10(f) of the Investment Company Act of
13 1940 is amended by adding at the end the following: “For
14 purposes of this subsection, a person that is under com-
15 mon control with an investment adviser shall be deemed
16 to be an affiliated person of the registered investment
17 company advised by such investment adviser.”.

18 **SEC. 132. BORROWING FROM AN AFFILIATED BANK.**

19 Section 18(f) of the Investment Company Act of
20 1940 (15 U.S.C. 80a–18(f)) is amended by adding at the
21 end the following:

22 “(3) Notwithstanding the provisions of paragraph
23 (1), it shall be unlawful for any registered investment com-
24 pany to borrow from any bank if such bank or any affili-
25 ated person thereof is an affiliated person, promotor, orga-
26 nizer, or sponsor of, or principal underwriter for, such

1 company, except that the Commission may, by rule, regu-
2 lation, or order, permit such borrowing that the Commis-
3 sion finds to be in the public interest and consistent with
4 the protection of investors.”.

5 **SEC. 133. INDEPENDENT DIRECTORS.**

6 (a) INTERESTED PERSON.—Section 2(a)(19)(A)(v)
7 of the Investment Company Act of 1940 (15 U.S.C. 80a–
8 2(a)(19)(A)(v)) is amended by striking “1934 or any af-
9 filiated person of such a broker or dealer, and” and insert-
10 ing “1934 or any person that, at any time during the pre-
11 ceding 6 months, has acted as custodian or transfer agent
12 or has executed any portfolio transactions for, engaged in
13 any principal transactions with, or loaned money to, the
14 investment company, or any other investment company
15 having the same investment adviser, principal underwriter,
16 sponsor, or promoter, or any affiliated person of such a
17 broker, dealer, or person, and”.

18 (b) AFFILIATION OF DIRECTORS.—Section 10(c) of
19 the Investment Company Act of 1940 (15 U.S.C. 80a–
20 10(c)) is amended by striking “bank, except” and insert-
21 ing “bank (and its subsidiaries) or any single financial
22 services holding company (and its affiliates and subsidi-
23 aries), as those terms are defined in the Financial Services
24 Holding Company Act of 1995, except”.

1 (c) EFFECTIVE DATE.—The provisions of subsection
2 (a) of this section shall become effective 1 year after the
3 date of enactment of this subtitle.

4 **SEC. 134. ADDITIONAL SEC DISCLOSURE AUTHORITY.**

5 (a) MISREPRESENTATION.—Section 35(a) of the In-
6 vestment Company Act of 1940 (15 U.S.C. 80a-34(a)) is
7 amended to read as follows:

8 **“SEC. 35. MISREPRESENTATIONS.**

9 “(a) MISREPRESENTATION OF GUARANTEES.—

10 “(1) IN GENERAL.—It shall be unlawful for any
11 person, in issuing or selling any security of which a
12 registered company is the issuer, to represent or
13 imply in any manner whatsoever that such security
14 or company—

15 “(A) has been guaranteed, sponsored, rec-
16 ommended, or approved by the United States,
17 or any agency, instrumentality or officer there-
18 of,

19 “(B) has been insured by the Federal De-
20 posit Insurance Corporation; or

21 “(C) is guaranteed by or is otherwise an
22 obligation of any bank or insured institution.

23 “(2) DISCLOSURES.—The Commission shall re-
24 quire the person issuing or selling the securities of
25 a registered investment company to prominently dis-

1 close, in writing or orally, as appropriate, that the
2 investment company or any security issued by it is
3 not insured by the Federal Deposit Insurance Cor-
4 poration and is not guaranteed by an affiliated de-
5 pository institution, and is not otherwise an obliga-
6 tion of such a bank or insured institution, in any
7 case where—

8 “(A) a financial services holding company,
9 bank, or separately identifiable division or de-
10 partment of a bank, or any affiliate or subsidi-
11 ary thereof is an investment adviser, organizer,
12 sponsor, promoter, principal underwriter, or an
13 affiliated person of the investment company; or

14 “(B) a bank or an affiliated person of a
15 bank is offering or selling securities of the in-
16 vestment company.

17 “The requirement of any disclosures referred to
18 above shall be subject to regulations adopted by the
19 Commission, after consultation with the appropriate
20 Federal banking agencies (as defined in section 3 of
21 the Federal Deposit Insurance Act).”.

22 (b) DECEPTIVE USE OF NAMES.—Section 35(d) of
23 the Investment Company Act of 1940 (15 U.S.C. 80a–
24 34(d)) is amended by inserting after the first sentence the
25 following: “It shall be deceptive and misleading for any

1 registered investment company which has an insured de-
2 pository institution (as defined in section 3 of the Federal
3 Deposit Insurance Act) or any affiliated person thereof as
4 an affiliated person, promoter, or principal underwriter,
5 to adopt, as part of the name or title of such company,
6 or of any security of which it is the issuer, any word which
7 is the same as or similar to, or a variation of, the name
8 or title of such insured depository institution or affiliate
9 thereof. The Commission, by rules or regulations upon its
10 own motion or by order upon application, may condi-
11 tionally or unconditionally exempt an investment company
12 from the preceding sentence if the Commission finds that
13 such exemption is consistent with the public interest, the
14 protection of investors, and the purposes of this title.”.

15 **SEC. 135. DEFINITION OF BROKER UNDER THE INVEST-**
16 **MENT COMPANY ACT OF 1940.**

17 Section 2(a)(6) of the Investment Company Act of
18 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-
19 lows:

20 “(6) ‘Broker’ has the same meaning as in the
21 Securities Exchange Act of 1934, except that it does
22 not include any person solely by reason of the fact
23 that such person is an underwriter for 1 or more in-
24 vestment companies.”.

1 **SEC. 136. DEFINITION OF DEALER UNDER THE INVEST-**
2 **MENT COMPANY ACT OF 1940.**

3 Section 2(a)(11) of the Investment Company Act of
4 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as
5 follows:

6 “(11) ‘Dealer’ has the same meaning as in the
7 Securities Exchange Act of 1934, but does not in-
8 clude an insurance company or investment com-
9 pany.”.

10 **SEC. 137. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**
11 **TION OF INVESTMENT ADVISER FOR BANKS**
12 **THAT ADVISE INVESTMENT COMPANIES.**

13 (a) INVESTMENT ADVISER.—Section 202(a)(11) of
14 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
15 2(a)(11)) is amended in subparagraph (A), by striking
16 “investment company” and inserting “investment com-
17 pany, except that the term ‘investment adviser’ includes
18 any bank or financial services holding company to the ex-
19 tent that such bank or financial services holding company
20 acts as an investment adviser to a registered investment
21 company, or if, in the case of a bank, such services are
22 performed through a separately identifiable department or
23 division, the department or division, and not the bank it-
24 self shall be deemed to be the ‘investment adviser’ ”; and

25 (b) SEPARATELY IDENTIFIABLE DEPARTMENT OR
26 DIVISION.—Section 202(a) of the Investment Advisers Act

1 of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at
2 the end the following:

3 “(25) ‘Separately identifiable department or di-
4 vision’ of a bank means a unit—

5 “(A) that is under the direct supervision of
6 an officer or officers designated by the board of
7 directors of the bank as responsible for the day-
8 to-day conduct of the bank’s investment adviser
9 activities for 1 or more investment companies,
10 including the supervision of all bank employees
11 engaged in the performance of such activities;
12 and

13 “(B) for which all of the records relating
14 to its investment adviser activities, are sepa-
15 rately maintained in or extractable from such
16 unit’s own facilities or the facilities of the bank,
17 and such records are so maintained or other-
18 wise accessible as to permit independent exam-
19 ination and enforcement of this Act and rules
20 and regulations promulgated under this Act.”.

21 **SEC. 138. DEFINITION OF BROKER UNDER THE INVEST-**
22 **MENT ADVISERS ACT OF 1940.**

23 Section 202(a)(3) of the Investment Advisers Act of
24 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-
25 lows:

1 “(3) ‘Broker’ has the same meaning as in the
2 Securities Exchange Act of 1934.”.

3 **SEC. 139. DEFINITION OF DEALER UNDER THE INVEST-**
4 **MENT ADVISERS ACT OF 1940.**

5 Section 202(a)(7) of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–2(a)(7)) is amended to read as
7 follows:

8 “(7) ‘Dealer’ has the same meaning as in the
9 Securities Exchange Act of 1934, but does not in-
10 clude an insurance company or investment com-
11 pany.”.

12 **SEC. 140. INTERAGENCY CONSULTATION.**

13 The Investment Advisers Act of 1940 (15 U.S.C.
14 80b–1 et seq.) is amended by inserting after section 210
15 the following new section:

16 **“SEC. 210A. CONSULTATION.**

17 “(a) EXAMINATION RESULTS AND OTHER INFORMA-
18 TION.—

19 “(1) The appropriate Federal banking agency
20 shall provide the Commission upon request the re-
21 sults of any examination, reports, records, or other
22 information as each may have with respect to the in-
23 vestment advisory activities of any financial services
24 holding company, bank, or department or division of
25 a bank, any of which is registered under section 203

1 of this title, or, in the case of a financial services
2 holding company or bank, has a subsidiary, depart-
3 ment, or division registered under that section, to
4 the extent necessary for the Commission to carry out
5 its statutory responsibilities.

6 “(2) The Commission shall provide to the ap-
7 propriate Federal banking agency upon request the
8 results of any examination, reports, records, or other
9 information with respect to the investment advisory
10 activities of any financial services holding company,
11 bank, or department or division of a bank, any of
12 which is registered under section 203 of this title, to
13 the extent necessary for the agency to carry out its
14 statutory responsibilities.

15 “(b) EFFECT ON OTHER AUTHORITY.—Nothing
16 herein shall limit in any respect the authority of the appro-
17 priate Federal banking agency with respect to such finan-
18 cial services holding company, bank, or department or di-
19 vision under any provision of law.

20 “(c) DEFINITION.—For purposes of this section, the
21 term ‘appropriate Federal banking agency’ shall have the
22 same meaning as in section 3 of the Federal Deposit In-
23 surance Act.”.

1 **SEC. 141. TREATMENT OF BANK COMMON TRUST FUNDS.**

2 (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of
3 the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is
4 amended by striking “or any interest or participation in
5 any common trust fund or similar fund maintained by a
6 bank exclusively for the collective investment and reinvest-
7 ment of assets contributed thereto by a bank in its capac-
8 ity as trustee, executor, administrator, or guardian” and
9 inserting “or any interest of participation in any common
10 trust fund or similar fund that is excluded from the defini-
11 tion of the term ‘investment company’ under section
12 3(c)(3) of the Investment Company Act of 1940”.

13 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
14 3(a)(12)(A)(iii) of the Securities Exchange Act of 1934
15 (15 U.S.C. 78c(a)(12)(A)(iii)) is amended to read as fol-
16 lows:

17 “(iii) any interest or participation in
18 any common trust fund or similar fund
19 that is excluded from the definition of the
20 term ‘investment company’ under section
21 3(c)(3) of the Investment Company Act of
22 1940.”.

23 (c) INVESTMENT COMPANY ACT OF 1940.—Section
24 3(c)(3) of the Investment Company Act of 1940 (15
25 U.S.C. 80a-3(c)(3)) is amended by inserting before the
26 period the following: “, if—

1 “(A) such fund is employed by the bank
2 solely as an aid to the administration of trusts,
3 estates, or other accounts created and main-
4 tained for a fiduciary purpose;

5 “(B) except in connection with the ordi-
6 nary advertising of the bank’s fiduciary services,
7 interests in such fund are not—

8 “(i) advertised; or

9 “(ii) offered for sale to the general
10 public; and

11 “(C) such fund is not charged any fees or
12 expenses that, when added to any other com-
13 pensation charged by the bank to a participant
14 account, would exceed the total amount of com-
15 pensation that would have been charged to such
16 participant account if no assets of the account
17 had been invested in interests in the fund, ex-
18 cept that any reasonable and necessary ex-
19 penses related to the prudent operation of the
20 fund, as determined by the appropriate Federal
21 banking agency (as defined in section 3(q) of
22 the Federal Deposit Insurance Act), shall be
23 permitted to be charged directly to the fund.”

24 “(d) TAX EFFECT.—It is the sense of the Congress
25 that the public interest would be furthered by enacting

1 legislation to amend section 584 of the Internal Revenue
2 Code of 1986 by inserting after subsection (g) the follow-
3 ing new subsection:

4 “(h) CONVERSION, MERGERS, OR REORGANIZATION
5 OF COMMON TRUST FUNDS.—Notwithstanding any other
6 provision of the Internal Revenue Code, any transfer of
7 all or substantially all of the assets of a common trust
8 fund taxable under this section to a registered investment
9 company taxable under subchapter M shall not result in
10 a gain or loss to the participants in such common trust
11 fund where the transfer is a result of a merger, conversion,
12 reorganization, transfer, or other similar transaction or se-
13 ries of transactions.”.

14 **SEC. 142. INVESTMENT ADVISERS PROHIBITED FROM HAV-**
15 **ING CONTROLLING INTEREST IN REG-**
16 **ISTERED INVESTMENT COMPANY.**

17 Section 15 of the Investment Company Act of 1940
18 (15 U.S.C. 80a-15) is amended by adding at the end the
19 following new subsection:

20 “(g) CONTROLLING INTEREST IN INVESTMENT COM-
21 PANY PROHIBITED.—

22 “(1) IN GENERAL.—If any investment adviser
23 to a registered investment company, or an affiliated
24 person of that investment adviser, also holds shares
25 of the investment company in a trustee or fiduciary

1 capacity, that investment adviser or affiliated person
2 may own, directly or indirectly, a controlling interest
3 in that registered investment company only—

4 “(A) if it passes the power to vote the
5 shares of the investment company through to—

6 “(i) the beneficial owners of the
7 shares;

8 “(ii) any person acting in a fiduciary
9 capacity who is not an affiliated person of
10 that investment adviser or any affiliated
11 person thereof; or

12 “(iii) any person authorized to receive
13 statements and information with respect to
14 the trust who is not an affiliated person of
15 that investment adviser or any affiliated
16 person thereof;

17 “(B) if it votes the shares of the invest-
18 ment company held by it in the same proportion
19 as shares held by all other shareholders of the
20 investment company; or

21 “(C) as otherwise permitted under such
22 rules, regulations, or orders as the Commission
23 may prescribe for the protection of investors.

24 “(2) EXEMPTION.—Paragraph (1) shall not
25 apply to any investment adviser to a registered in-

1 vestment company, or an affiliated person of that in-
 2 vestment adviser, holding shares of the investment
 3 company in a trustee or fiduciary capacity if that
 4 registered investment company consists solely of as-
 5 sets of—

6 “(A) any common trust fund or similar
 7 fund described in section 3(c)(3) of the Invest-
 8 ment Company Act of 1940;

9 “(B) any employees’ stock bonus, pension,
 10 or profit-sharing trust that qualifies under sec-
 11 tion 401 of the Internal Revenue Code of 1986;

12 “(C) any governmental plan described in
 13 section 3(a)(2)(C) of the Securities Act of
 14 1933; or

15 “(D) any collective trust fund maintained
 16 by a bank and consisting solely of assets of
 17 trusts or governmental plans described in sub-
 18 paragraph (B) or (C).”.

19 **SEC. 143. PURCHASE OF INVESTMENT COMPANY SECURI-**
 20 **TIES AS FIDUCIARY.**

21 (a) IN GENERAL.—Section 17 of the Investment
 22 Company Act of 1940 (15 U.S.C. 80a–17) is amended by
 23 adding at the end the following:

24 “(k) PURCHASE OF INVESTMENT COMPANY SECURI-
 25 TIES AS FIDUCIARY.—

1 “(1) IN GENERAL.—An investment adviser to a
2 registered investment company, or an affiliated per-
3 son of the investment adviser, promoter, organizer,
4 or sponsor of the registered investment company, or
5 principal underwriter for the registered company
6 may purchase securities issued by such investment
7 company for the account of a beneficiary as fidu-
8 ciary, only if disclosure of such information as the
9 Commission shall prescribe under paragraph (2) has
10 been provided to the person (other than to the in-
11 vestment advisor to the registered investment com-
12 pany, or an affiliated person of the investment advi-
13 sor, promoter, organizer, or sponsor of the registered
14 investment company, or principal underwriter for the
15 registered company who may purchase securities of
16 the registered company as fiduciary for the account)
17 to whom periodic financial statements are customar-
18 ily provided.

19 “(2) DISCLOSURE RULES.—The Commission
20 shall prescribe, by rule, regulation, or order, the
21 manner, form, and content of the information re-
22 quired to be disclosed under paragraph (1), as the
23 Commission determines necessary or appropriate in
24 the public interest and for the protection of inves-
25 tors.

1 “(3) PROSPECTIVE EFFECT.—This subsection
2 shall be effective for purchase for fiduciary accounts
3 made after the effective date of this subtitle.”.

4 (b) EXAMINATION OF TRUST DEPARTMENT SECURI-
5 TIES PURCHASES.—Section 10(d) of the Federal Deposit
6 Insurance Act (12 U.S.C. 1820(d)) is amended by adding
7 at the end the following:

8 “(6) TRUST DEPARTMENT EXAMINATION.—In
9 performing an examination under this subsection,
10 the appropriate Federal banking agency shall exam-
11 ine purchases by an insured depository institution’s
12 trust department or division of the securities of an
13 affiliated investment company, or an investment
14 company that is an affiliated person of an affiliated
15 person of the institution (as those terms are defined
16 in sections 2 and 3 of the Investment Company Act
17 of 1940), to assure compliance with applicable Fed-
18 eral and State trust laws.”.

19 **SEC. 144. CONFORMING CHANGE IN DEFINITION.**

20 Section 2(a)(5) of the Investment Company Act of
21 1940 (15 U.S.C. 80a-2(a)(5)) is amended by striking
22 “(A) a banking organization organized under the laws of
23 the United States” and inserting “(A) a depository insti-
24 tution, as that term is defined in section 3 of the Federal

1 Deposit Insurance Act or a United States branch or agen-
2 cy of a foreign bank”.

3 **SEC. 145. EFFECTIVE DATE.**

4 This subtitle shall become effective 270 days after the
5 date of enactment of this Act.

6 **Subtitle D—Financial Activities**

7 **SEC. 150. FINANCIAL ACTIVITIES.**

8 Section 4(c)(8) of the Bank Holding Company Act
9 (12 U.S.C. 1843(c)(8)) is amended—

10 (1) by striking the text beginning with “shares
11 of any company” through “for a bank holding com-
12 pany to provide” and inserting instead the following:
13 “shares of any company the activities of which the
14 Board after due notice has determined (by order,
15 regulation, or advisory opinion) to be financial in na-
16 ture or incidental to such financial activities. Any
17 activity that the Board has determined, by order or
18 regulation that is in effect on the date of enactment
19 of the Financial Services Competitiveness Act of
20 1995, to be so closely related to banking or manag-
21 ing or controlling banks as to be a proper incident
22 thereto shall be deemed to be of a financial nature
23 for purposes of this paragraph without further ac-
24 tion by the Board (subject to the same terms and
25 conditions contained in such order or regulation, un-

1 less modified by the Board), but for purposes of this
 2 subsection it is not closely related to banking or
 3 managing or controlling banks or financial in nature
 4 or incidental to a financial activity for a financial
 5 services holding company to provide”;

6 (2) by inserting before the period at the end of
 7 the third sentence thereof the following: “and be-
 8 tween activities commenced by affiliates of different
 9 classes of banks.”; and

10 (3) by striking the second sentence.

11 **SEC. 151. NO PRIOR APPROVAL REQUIRED FOR WELL CAP-**
 12 **ITALIZED AND WELL MANAGED FINANCIAL**
 13 **SERVICES HOLDING COMPANIES.**

14 (a) PERMISSIBLE NONBANKING ACTIVITIES.—Sec-
 15 tion 4(j) of the Bank Holding Company Act of 1956 (12
 16 U.S.C. 1843(j)) is amended—

17 (1) in paragraph (1), by striking “No” and in-
 18 serting in its place “Except as provided in para-
 19 graph (3), no”; and

20 (2) by adding at the end the following new
 21 paragraphs:

22 “(3) NO NOTICE REQUIRED FOR CERTAIN
 23 TRANSACTIONS.—No notice under paragraph (1) or
 24 subsections (c)(8) or (a)(2)(B) is required for a pro-
 25 posal by a financial services holding company to en-

1 gage in any activity or acquire the shares or assets
2 of any company if the proposal qualifies under para-
3 graph (4).

4 “(4) CRITERIA FOR STATUTORY APPROVAL.—A
5 proposal qualifies under this paragraph if all of the
6 following criteria are met:

7 “(A) FINANCIAL CRITERIA.—Both before
8 and immediately after the proposed transaction:

9 “(i) the acquiring financial services
10 holding company is well capitalized;

11 “(ii) the lead insured depository insti-
12 tution of such holding company is well cap-
13 italized;

14 “(iii) well capitalized insured deposi-
15 tory institutions control at least 80 percent
16 of the aggregate total risk-weighted assets
17 of insured depository institutions controlled
18 by such holding company; and

19 “(iv) no insured depository institution
20 controlled by such holding company is
21 undercapitalized.

22 “(B) MANAGERIAL CRITERIA.—

23 “(i) WELL MANAGED.—At the time of
24 the transaction, the acquiring financial
25 services holding company, its lead insured

1 depository institution, and insured depository
2 institutions that control at least 80
3 percent of the aggregate total risk-weighted
4 assets of insured depository institutions
5 controlled by such holding company are
6 well managed;

7 “(ii) LIMITATION ON POORLY MAN-
8 AGED INSTITUTIONS.—

9 “(I) IN GENERAL.—No insured
10 depository institution controlled by
11 the acquiring financial services hold-
12 ing company has received one of the
13 lowest two composite ratings at the
14 later of the institution’s most recent
15 examination or subsequent review;

16 “(II) RECENTLY ACQUIRED IN-
17 STITUTIONS.—Insured depository in-
18 stitutions acquired by the financial
19 services holding company within the
20 previous 12 months may be excluded
21 for purposes of subclause (I) if—

22 “(aa) the financial services
23 holding company has developed a
24 plan acceptable to the appro-
25 priate Federal banking agency

1 (as defined in section 3 of the
2 Federal Deposit Insurance Act)
3 for the institution to restore the
4 capital and management of the
5 institution; and

6 “(bb) all such insured depos-
7 itory institutions represent, in
8 the aggregate, less than 25 per-
9 cent of the aggregate total risk-
10 weighted assets of all insured de-
11 pository institutions controlled by
12 the financial services holding
13 company.

14 “(C) ACTIVITIES PERMISSIBLE.—Following
15 consummation of the proposal, the financial
16 services holding company engages directly or
17 through a subsidiary solely in:

18 “(i) activities that are permissible
19 under subsection (c)(8), as determined by
20 the Board by regulation, order, or advisory
21 opinion thereunder, subject to all of the re-
22 strictions, terms and conditions of such
23 subsection and such regulation, order, or
24 advisory opinion; and

1 “(ii) such other activities as are other-
2 wise permissible under another subsection
3 of this Act, subject to the restrictions,
4 terms and conditions, including any prior
5 notice or approval requirements, provided
6 in this Act.

7 “(D) SIZE OF ACQUISITION.—

8 “(i) ASSET SIZE.—The book value of
9 the total risk-weighted assets acquired does
10 not exceed 10 percent of the consolidated
11 total risk-weighted assets of the acquiring
12 financial services holding company.

13 “(ii) CONSIDERATION.—The gross
14 consideration to be paid for the securities
15 or assets does not exceed 15 percent of the
16 consolidated Tier 1 capital of the acquiring
17 financial services holding company.

18 “(E) NOTICE NOT OTHERWISE WAR-
19 RANTED.—For proposals described in para-
20 graph (5)(B), the Board has not, prior to the
21 conclusion of the period provided in paragraph
22 (5)(B), advised the financial services holding
23 company that a notice under paragraph (1) is
24 required.

25 “(5) NOTIFICATION.—

1 “(A) COMMENCEMENT OF ACTIVITIES AP-
2 PROVED BY RULE.—A financial services holding
3 company that qualifies under paragraph (4)
4 and that proposes to engage de novo, directly or
5 through a subsidiary, in any activity that is per-
6 missible under subsection (c)(8), as determined
7 by the Board by regulation, may commence that
8 activity without prior notice to the Board and
9 must provide written notification to the Board
10 no later than 10 business days after commenc-
11 ing the activity.

12 “(B) ACTIVITIES PERMITTED BY ORDER
13 AND ACQUISITIONS.—At least 12 business days
14 prior to commencing any activity (other than an
15 activity described in subparagraph (A)) or ac-
16 quiring shares or assets of any company in a
17 proposal that qualifies under paragraph (4), the
18 financial services holding company must provide
19 the Board written notification of the proposal,
20 unless the Board determines that no notice or
21 a shorter notice period is appropriate. A notifi-
22 cation under this subparagraph must include a
23 description of the proposed activities and the
24 terms of any proposed acquisition.

1 “(6) ADJUSTMENT OF AMOUNTS.—The Board
2 may by regulation adjust the amounts and the man-
3 ner in which the percentage of insured depository in-
4 stitutions is calculated under paragraph (4)(B)(i),
5 paragraph (4)(B)(ii)(II)(bb), and paragraph (4)(D)
6 if the Board determines that any such adjustment is
7 consistent with safety and soundness and the pur-
8 poses of this Act.

9 “(7) EXPEDITED PROCEDURE FOR NEW ACTIVI-
10 TIES.—

11 “(A) EXPEDITED PRE-ACQUISITION RE-
12 VIEW.—A financial services holding company
13 may, at the end of the period provided in para-
14 graph (5)(B) and subject to a final ruling as
15 provided in subparagraph (B), acquire a com-
16 pany engaged in activities that the Board has
17 not previously determined to be financial in na-
18 ture if—

19 “(i) the proposal qualifies under all of
20 the criteria in paragraph (4) except para-
21 graph (4)(C);

22 “(ii) the financial services holding
23 company provides the notification required
24 under paragraph (5)(B), and includes in
25 that notification an explanation of the

1 facts and circumstances that provide a rea-
2 sonable basis for concluding that the pro-
3 posed activities are financial in nature or
4 incidental to such financial activities; and

5 “(iii) prior to the end of the notifica-
6 tion period in paragraph (5)(B), the Board
7 has not required a notice under paragraph
8 (1) or advised the financial services hold-
9 ing company that the company has failed
10 to provide a reasonable basis for conclud-
11 ing that the proposed activities are finan-
12 cial in nature or incidental to such finan-
13 cial activities. A decision by the Board not
14 to require a notice under paragraph (1)
15 during this period does not prejudice the
16 Board’s decision under subparagraphs (B)
17 and (C).

18 “(B) POST-ACQUISITION REVIEW.—

19 “(i) NOTICE PROCEDURE.—A finan-
20 cial services holding company that is per-
21 mitted to make an acquisition under this
22 paragraph must, within 30 days following
23 consummation of the acquisition, file a no-
24 tice with the Board in accordance with
25 paragraph (1).

1 “(ii) LIMITED REVIEW.—The Board’s
2 review of a post-consummation notice re-
3 quired under this subparagraph shall be
4 limited to determining whether the pro-
5 posed activities are permissible under sub-
6 section (c)(8).

7 “(C) CONDITIONAL ACTION.—Nothing in
8 this paragraph shall limit in any way the au-
9 thority of the Board under this section to im-
10 pose conditions on the conduct of any activity
11 or the ownership of any company.

12 “(D) DIVESTITURE OF IMPERMISSIBLE AC-
13 TIVITIES.—If the Board finds that any activity
14 proposed is not permissible under subsection
15 (c)(8), the financial services holding company
16 must, within two years of the date of such de-
17 termination, terminate the activity or divest the
18 company acquired in reliance on this para-
19 graph.”.

20 **SEC. 152. CONFORMING AMENDMENTS TO THE BANK HOLD-**
21 **ING COMPANY ACT.**

22 (a) ELIMINATION OF OBSOLETE PROVISIONS.—The
23 Bank Holding Company Act of 1956 (12 U.S.C. 1841
24 through 1849) is amended:

25 (1) in section 4(a)(2)—

1 (A) by striking the phrase beginning “or in
2 the case of a company” and ending “after De-
3 cember 31, 1980,”; and

4 (B) by striking the sentence beginning
5 “Notwithstanding any other provision”;

6 (2) in section 4(b), by striking “After two years
7 from May 9, 1956, no” and inserting in its place
8 “No”; and

9 (3) in section 5—

10 (A) by striking “Within one hundred and
11 eighty days after May 9, 1956, or within” and
12 inserting in its place “Within”; and

13 (B) by striking “whichever is later,”.

14 (b) CONFORMING AMENDMENTS.—The Bank Hold-
15 ing Company Act of 1956 (12 U.S.C. 1841 through 1849)
16 is amended:

17 (1) in section 3(c)(4), by striking “one-bank
18 holding company” each place it appears and insert-
19 ing in its place “one-bank financial services holding
20 company”;

21 (2) in section 3(f)(5), by striking “bank holding
22 company” the first and second time it appears and
23 inserting in each place “financial services holding
24 company”;

1 (3) in section 4(i)(3)(A), by striking “is ac-
2 quired” and inserting in its place “was acquired”;

3 (4) by striking “bank holding companies” each
4 place it appears in the following sections and insert-
5 ing in each place “financial services holding compa-
6 nies”—

7 (A) Section 3(d);

8 (B) Section 3(f);

9 (C) Section 4(f); and

10 (D) Section 7(a);

11 (5) by striking “bank holding company’s” each
12 place it appears in the following sections and insert-
13 ing in each place “financial services holding compa-
14 ny’s”—

15 (A) Section 2(d); and

16 (B) Section 4(c)(14);

17 (6) by striking “bank holding company” each
18 place it appears in the following sections and insert-
19 ing in each place “financial services holding com-
20 pany”—

21 (A) Section 2(a);

22 (B) Section 2(d);

23 (C) Section 2(e);

24 (D) Section 2(g);

25 (E) Section 2(h);

- 1 (F) Section 2(o);
- 2 (G) Section 3(a);
- 3 (H) Section 3(b);
- 4 (I) Section 3(d);
- 5 (J) Section 3(f)(1);
- 6 (K) Section 3(f)(2);
- 7 (L) Section 3(f)(3);
- 8 (M) Section 4(a);
- 9 (N) Section 4(c)(ii);
- 10 (O) Section 4(c)(1);
- 11 (P) Section 4(c)(2);
- 12 (Q) Section 4(c)(3);
- 13 (R) Section 4(c)(7);
- 14 (S) Section 4(c)(8);
- 15 (T) Section 4(c)(10);
- 16 (U) Section 4(c)(11);
- 17 (V) Section 4(c)(12)(A);
- 18 (W) Section 4(c)(14);
- 19 (X) Section 4(d);
- 20 (Y) Section 4(e);
- 21 (Z) Section 4(f)(4);
- 22 (AA) Section 4(f)(5);
- 23 (BB) Section 4(f)(9);
- 24 (CC) Section 4(g);
- 25 (DD) Section 4(h);

1 (EE) Section 4(i)(1);

2 (FF) Section 4(i)(2);

3 (GG) Section 4(j);

4 (HH) Section 5;

5 (II) Section 7(b);

6 (JJ) Section 8; and

7 (KK) Section 11;

8 (7) in section 4(f)(1), by striking “bank holding
9 company” the second place it appears and inserting
10 in its place “financial services holding company”;
11 and

12 (8) in section 4(i)(3), by striking “is acquired”
13 and inserting in its place “was acquired”.

14 (c) TREATMENT OF EXISTING BANK HOLDING COM-
15 PANIES.—Section 2(a)(6) of the Bank Holding Company
16 Act of 1956 (12 U.S.C. 1841(a)(6)) is amended by insert-
17 ing at the end the following: “Any company that was a
18 bank holding company on the day before the date of enact-
19 ment of the Financial Services Competitiveness Act of
20 1995 shall, for purposes of this chapter, be deemed to have
21 been a financial services holding company from the date
22 on which the company became a bank holding company.”

23 (d) SHORT TITLE.—Section 1 of the Bank Holding
24 Company Act of 1956 shall be amended to read as follows:

1 “‘This Act may be cited as the ‘Financial Services
2 Holding Company Act of 1995’, and any reference in any
3 Federal or State law to a provision of the Bank Holding
4 Company Act of 1956 shall be deemed to be a reference
5 to the corresponding provision of the Financial Services
6 Holding Company Act of 1995.’”.

7 (e) OTHER REFERENCES.—Any reference in Federal
8 law to “bank holding company” or “bank holding compa-
9 nies” as those terms were defined under the Bank Holding
10 Company Act of 1956 prior to the enactment of this Act
11 shall be deemed to include a reference to “financial serv-
12 ices holding company” and “financial services holding
13 companies”, respectively, as those terms are defined under
14 the Financial Services Holding Company Act of 1995.

15 **SEC. 153. CONFORMING AMENDMENTS TO THE BANK HOLD-**
16 **ING COMPANY ACT AMENDMENTS OF 1970.**

17 Section 106 of the Bank Holding Company Act
18 Amendments of 1970 (12 U.S.C. 1971 through 1978) is
19 amended by striking “bank holding company” each place
20 it appears and inserting in its place “financial services
21 holding company”.

22 **SEC. 154. ELIMINATION OF DUPLICATIVE APPLICATIONS.**

23 Section 18(c) of the Federal Deposit Insurance Act
24 (12 U.S.C. 1828(c)) is amended by adding at the end the
25 following new paragraph:

1 “(12) The provisions of this subsection do not
 2 apply to any merger, consolidation, acquisition of as-
 3 sets or assumption of liabilities involving only in-
 4 sured depository institutions that are subsidiaries of
 5 the same depository institution holding company if—

6 “(A) the responsible agency would not be
 7 prohibited from approving the transaction
 8 under section 44 of this Act;

9 “(B) the acquiring, assuming, or resulting
 10 institution complies with all applicable provi-
 11 sions of section 44 as if the merger, consolida-
 12 tion or acquisition was approved under this sub-
 13 section; and

14 “(C) the acquiring, assuming, or resulting
 15 institution provides written notification of the
 16 transaction to the appropriate Federal banking
 17 agency for the institution at least 10 days prior
 18 to consummation of the transaction.”.

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